

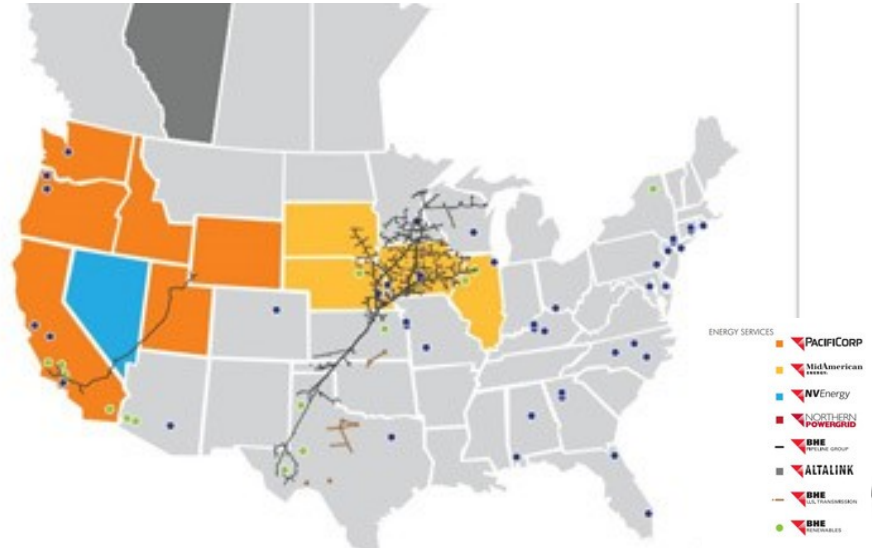


PUCT Staff Welcomes Buffett's Oncor Bid; Top Debtor Miffed

By Tom Kleckner and Rich Heidorn Jr.

Warren Buffett's bid for Oncor won an immediate endorsement from the head of the Texas Public Utility Commission's staff Friday, suggesting the Oracle of Omaha may succeed where two other suitors for the state's largest transmission and distribution utility failed. But first, Buffett may have to overcome a challenge from hedge fund Elliott Management, which is reportedly unhappy with the offering price.

Des Moines, Iowa-based Berkshire Hathaway Energy (BHE) announced Friday it had reached an agreement on an all-cash deal that will pay \$9 billion for bankrupt Energy Future Holdings (EFH), Oncor's parent. BHE said that is based on an equity value of



Berkshire Hathaway Energy's current utility holdings. | Berkshire Hathaway Energy

[Continued on page 9](#)

PJM MOPR Order Reversed; FERC Overstepped, Court Says

By Rory D. Sweeney

A federal appeals court Friday slapped down FERC for overstepping its authority in a ruling forcing PJM to abandon a stakeholder compromise on market power rules.

The D.C. Circuit Court of Appeals decision remanding FERC's order eliminates portions of PJM's minimum offer price rule that have been in place since 2013 and orders the

commission to review its decisions on the topic (15-1452).

The court determined that FERC exceeded its "passive and reactive role" under Section 205 of the Federal Power Act when it denied a 2012 proposal by PJM to revise its MOPR provisions but suggested additional revisions that it would accept.

Only 'Minor' Changes Permitted

Section 205 requires FERC to

[Continued on page 15](#)

Traders: PJM Delay, Secret Support Could Result in Pa. Tax Transparency at Issue

By Rory D. Sweeney

PJM financial traders, who have been complaining for years that RTO rule changes and FERC enforcement have threatened their livelihood, now say they fear that Pennsylvania lawmakers may target them in efforts to close the state's budget gap.

They say the situation might be different if PJM officials — who knew about a potential tax on



Pennsylvania State Capitol

virtual trades for nearly a month before bringing it to traders' attention — had given them enough notice to develop a com-

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Jan Smutny-Jones:
30 Years of Power

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Dominion Announces 2nd US OSW Project

(p.20)



Reed Smith Adds Honorable, 2
Others to Boost FERC Practice

(p.21)

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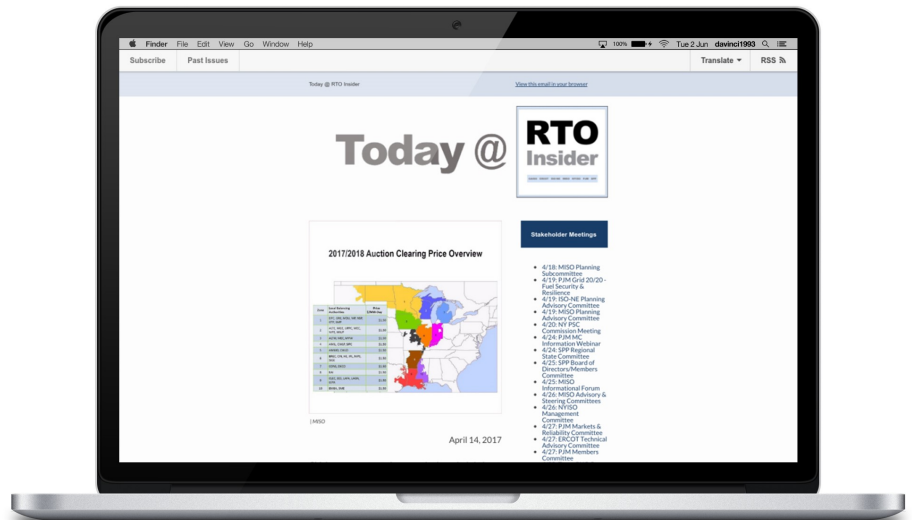
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Correction

RTO Insider mistakenly [attributed](#) to the New England Power Pool a study that predicted the region will have only enough natural gas capacity to supply about half of its gas-fired generation by winter 2025. The analysis was conducted by ISO-NE.



COUNTERFLOW

BY STEVE HUNTOON

FERC Order 1000: Need More of Good Thing

The most significant innovation in FERC Order 1000? Transmission competition.

Where and when transmission competition is properly implemented, it is a staggering success. Consider a recent PJM “window” seeking solutions to reliability and congestion needs.

One such need was relief of high congestion on a transmission corridor between Pennsylvania and Maryland where low-cost natural gas generation from Pennsylvania hits a bottleneck. PJM received 44 proposals from nine separate entities, proposing solutions ranging in cost from \$6 million to \$192 million.¹

Before transmission competition, it was like the color of a Model T. You could have any



Huntoon

solution you wanted as long as it was the transmission owner’s solution.²

And TOs never have had an incentive to find the most cost-effective solution, for reasons brilliantly explained by Montana Public Service Commissioner Travis Kavulla in his recent *American Affairs* article:³

This so-called cost-of-service regulation suggests to the utility that it should spend as much as possible, even when less might do. The barometer for whether an investment is wise for a utility is not capital productivity, but whether expenditures will be disallowed by the regulator. This seldom occurs. Indeed, the legal presumption that governs the arcane, trial-like proceedings of utility commissions is that all utility spending is prudent. A utility earns a return even on the cost of decorating the C-suite.

Investment funds understand this dynamic perfectly. Their analysis often simply celebrates more and more capital investment (“ratebase” or “capex” in industry lingo), with

little attention to the underlying value it delivers to customers. One recent investor note by UBS on the New Jersey utility PSEG was titled “More Ratebase Please.”

The other good news about the advent of transmission competition is how little it costs to implement. Last year it cost PJM \$451,610 to administer its Order 1000 proposal windows; project sponsors paid proposal fees of \$490,000.⁴ So PJM stakeholders *made* money implementing competition.⁵

The bad news is that there is very little of this good thing. The scope of transmission competition has become severely restricted. If you look at the pie chart on the next page, only the smallest slice — less than 10% of the cost of transmission projects in PJM in 2016 — had competition.⁶

The exceptions to transmission competition have swallowed more than 90% of the rule.⁷ The biggest exception — \$899 million in PJM last year — is “Supplemental” projects, which

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COUNTERFLOW

BY STEVE HUNTOON

FERC Order 1000: Need More of Good Thing

Continued from page 3

by definition are projects that *PJM itself does not consider needed*. The TOs have the unilateral right to build whatever they'd like, as long as they tell PJM what they are doing.

Under this exception, billions of dollars are being spent based on TO claims of "aging infrastructure," but no one knows if those billions materially improve reliability. Indeed, a Lawrence Berkeley National Laboratory study found no statistical correlation between transmission (and distribution) spending and reliability.⁸

Obviously, at some age transmission lines would fall down and affect reliability, but there are few instances of that happening. There are many causes of outages (severe weather, lightning, human error, misoperations, and even metallic balloons and squirrels).⁹

This enormous transmission spending beyond PJM's purview reverses the situation from 10 years ago when the vast bulk of transmission spending in the RTO was what it determined was needed.¹⁰

The TO exclusives seem to be falling into a regulatory gap, as states seem to assume that PJM is reviewing all this. But PJM only has oversight over Order 1000 projects and "Immediate Need" projects, and only uses competitive windows for the former.

And, unbelievable as it may seem, PJM seems to be the best of the RTOs.

In ISO-NE, "Immediate Need" and other exceptions appear to have swallowed the rule *entirely*.¹¹ The section of the ISO-NE webpage listing competitive transmission RFPs is ... empty.¹²

In MISO, the allocation of transmission costs was changed so that virtually all transmission projects qualify for the "local" exception. How many projects have been subject to competition? That loneliest number: One.

States (and others) are increasingly concerned about the explosion in transmission costs,¹³ but one simple step states could take on their own is to require, as a condition of the state certificate and/or rate recovery process, that all projects costing more than some threshold be subject to an Order 1000 window. FERC could do the same as a condition of cost flow through in FERC-jurisdictional transmission rates. This would not solve the problem of unwarranted projects, but it would help mitigate the *carte blanche* in spending on such projects.¹⁴

Bottom line: Transmission competition works great when properly implemented. But it's been severely limited. We need more of the good thing.

Steve Huntoon is a former president of the Energy Bar Association, with 30 years of experience advising and representing energy companies and institutions. He received a B.A. in economics and a J.D. from the University of Virginia. He is the principal in Energy Counsel, LLP, www.energy-counsel.com.

¹ <http://pjm.com/~media/committees-groups/committees/teac/20170413/20170413-2016-2017-rtep-window-market-efficiency-proposals.ashx>

² By the way, there is a right way and a wrong way to implement transmission competition. PJM identifies transmission "needs" and requests proposals to address these needs (the "sponsorship model"). As a result, PJM gets wide-ranging, solution-based proposals (in the example I gave, projects ranging from \$6 million to \$192 million). In contrast, CAISO identifies specific projects and requests proposals to build those specific projects (the "procurement model"). Thus, CAISO totally misses the opportunity for competitors to offer solutions that may cost a fraction of what the ISO thinks best.

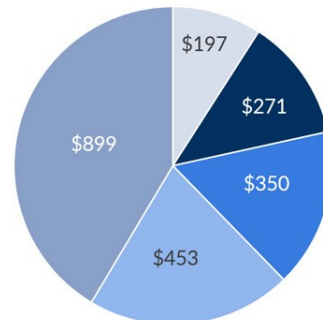
³ <https://americanaffairsjournal.org/2017/05/no-free-market-electricity-can-ever/>

⁴ <http://pjm.com/~media/committees-groups/committees/teac/20170413/20170413-reliability-analysis-update.ashx> (slide 5)

⁵ This renders inexplicable an RTO claim that transmission competition is not worthwhile because of "staff headaches." (See *PJM, SPP Chiefs Share Frustration with Order 1000*.) When potential savings are in the billions, and the cost of implementation is in the hundreds of thousands, the benefit-to-cost value proposition — at least for customers — is self-evident.

⁶ Thanks to LS Power for providing this data.

⁷ It should be noted that going forward, the exceptions



■ Greenfield - Competition ■ TO Upgrades - TO Only
 ■ Local Upgrades - TO Only ■ Immediate Need - TO Only
 ■ Supplemental - TO Only

PJM 2016 transmission spend (\$ millions) | LS Power

are expanding with the exclusion of facilities below 200 kV and of upgrades to substation equipment (except transformers). So the less than 10% of transmission spend subject to competition will get even smaller.

⁸ <https://emp.lbl.gov/sites/default/files/lbnl-188741.pdf> (pages 37-38)

⁹ http://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/SOR_2017_MASTER_20170613.pdf (see Table B.4 on pages 86-87)

¹⁰ <http://www.opsi.us/meetings/2016/panels/Panel-6-Herling.pdf> (slide 3)

¹¹ The proliferation of "Immediate Need" projects is wholly at odds with ISO-NE's 10-year planning horizon. https://www.iso-ne.com/static-assets/documents/2017/01/ison_e_overview_regional_update_nh_ste_committee_finale.pdf (slide 28)

¹² <https://www.iso-ne.com/system-planning/transmission-planning/competitive-transmission-projects>

¹³ According to data compiled by the PJM Market Monitor, the cost of transmission in PJM has increased from \$4.09/MWh in 2009 to \$8.33/MWh in 2016. http://monitoringanalytics.com/reports/Presentations/2010/IMM_MC_SOM_2009_Overview.pdf (slide 12) and http://monitoringanalytics.com/reports/Presentations/2017/IMM_MC_SOM_Special_Session_2016_SOM_20170323.pdf (slide 11). This is a 104% increase in seven years. With no end in sight.

¹⁴ And, as I've suggested before, federal and state regulators should stop giving returns on equity that are much greater than the utility cost of capital. <http://energy-counsel.com/docs/Nice-Work-If-You-Can-Get-It-Fortnightly-August-2016.pdf>. Two Wall Street deans corroborated this phenomenon of overly generous returns on equity. <https://www.fortnightly.com/fortnightly/2016/10/dont-cry-utility-shareholders-america>.

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Qualified Support for CAISO Gas Constraint Plan

By Jason Fordney

California electricity sellers are cautiously supportive of CAISO's proposal to permanently assume authority to limit output from gas-fired generators as an emergency response to possible limitations on gas deliveries.

But the ISO's Department of Market Monitoring (DMM) said the grid operator has not fully justified its [gas-electric coordination straw proposal](#) and concerns need to be addressed before it would recommend approval by the Board of Governors or FERC.

CAISO last month proposed imposing the gas-electric coordination measures across both the ISO and the Western Energy Imbalance Market (EIM). (See [Plan Would Apply Aliso Canyon Measures Across CAISO, EIM.](#))

The curtailments previously were limited to the area in Southern California affected by the massive gas escape from Aliso Canyon, which since October 2015 has been subject to ongoing withdrawal restrictions.

"The draft final proposal does not address many of the key concerns from the straw proposal highlighted by DMM," the Monitor said. While the ISO has said the constraints

have been effective, it "has not provided much analysis or explanation as to how well the constraints worked."

The department said its support of gas price scalars used to distinguish resources affected by the gas limitations from the rest of the ISO market areas is dependent on the results of its analysis as to whether they are warranted. The scalars would be applied to the next-day gas index published the morning of the day-ahead market run to calculate cost estimates.

Power sellers are evaluating the effect of the measures, which target not only Aliso Canyon but other storage and delivery constraints on the system as well. Natural gas can be diverted to address heating needs, as it was over four days in January when CAISO constrained gas plant output.

In comments filed with CAISO, Portland General Electric (PGE) — which will join the EIM in October — said "this administrative measure needs to be characterized in the filing as a last-resort option, deployable for the specific purpose of maintaining system reliability during outlier events." Market-based solutions are preferable, and the utility requested that the ISO work on needed price formation and bidding enhancements.

PGE asked what would be the likely effect of the policy on LMPs, as well as whether it would undermine market participants' ability to manage risk. PGE and Pacific Gas and Electric both wondered what exact events or evaluations would cause the constraints to kick in.

The Western Power Trading Forum said: "The ISO's explanation as to why extending the Aliso Canyon measures to the entire footprint would help to protect reliability under certain extreme conditions is reasonable; however, it should be noted that no other ISO has such authority to disrupt the market in such a way, and that under the EIM, the individual balancing authorities remain responsible for ensuring the reliability of their system." The group said its support is contingent on the scalars remaining at the current place and across the entire EIM footprint.

The California Public Utilities Commission is also exploring whether to shut down Aliso Canyon entirely. (See [Study to Weigh Aliso Canyon Shutdown.](#)) Residents near the facility still complain about health problems they say are associated with the leak, putting more pressure on elected officials and regulators to respond to the local impact.

Jan Smutny-Jones: 30 Years of Power

By Jason Fordney

SACRAMENTO, Calif. — As CEO of the Independent Energy Producers Association (IEPA), Jan Smutny-Jones has had a front-row seat in the California energy debate since 1987. IEPA represents independent energy producers including biomass, geothermal, small hydro, solar, wind, cogeneration and natural gas-fired merchant facilities, with offices just a block from the state capitol.

Smutny-Jones is an advocate for [Secure California's Energy Future](#), a campaign that has been urging the State Legislature to expand CAISO's market into other areas of the West. But some members of the State Assembly and market participants want the state to go slow on regionalization, which would require bringing representatives



Jan Smutny-Jones | © RTO Insider

from other states onto the ISO's Board of Governors. (See [California Lawmakers Take Up CAISO Expansion.](#))

Electricity planning has changed greatly since his youth, when he watched offshore oil tankers supplying the Huntington Beach power plant as he body-surfed. But renewable generation is a decades-old concept in California, as is Western regional market coordination. There has been a lot of public

debate about California's aggressive renewable policies, but environmentally conscious planning has been a hallmark in the Golden State for decades, Smutny-Jones says.

"Where we are today in terms of the discussion, it actually has a pretty long pedigree," he said in a recent interview. "It isn't like we just cooked this up in AB 32 or whatever." Assembly Bill 32, the Global Warming Solutions Act of 2006, was a landmark law requiring the state to reduce its greenhouse gas emissions to 1990 levels by 2020.

The 2015 Clean Energy and Pollution Reduction Act, which established the state's 50% by 2030 renewable portfolio standard, also directed the state's energy agencies to explore transforming CAISO into a regional entity to help meet its clean energy target. More recently, the State Senate approved a bill setting a 100% renewable generation goal by 2045, the latest example of the state's aggressive approach toward clean

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California Utilities Say Data Bill Poses Security Risk

By Jason Fordney

SACRAMENTO, Calif. — California utilities and business groups are opposing a proposed state law that would increase the amount of publicly available data about electricity consumers, saying it presents a major risk to physical grid security.

But environmental groups and others support the energy data transparency bill ([SB 356](#)) because it would allow customers to better manage their data and provide them more visibility into grid operations, reducing barriers to participation in energy efficiency and other programs.

The State Assembly [Committee on Utilities and Energy](#) on Wednesday passed the Democrat-sponsored bill along party lines. Committee members added amendments that require customer permission to release information and direct the California Public Utilities Commission to determine exactly what information should be released.

The bill, approved by the State Senate in May in a 25-13 vote, will move to the Assembly Appropriations Committee before going back to the Senate for another vote.

The bill's sponsor defended the bill, which has also drawn opposition from business and public interest groups representing Latinos and African-Americans.

"The fact that some folks assert these privacy issues — whether it is a fact or an assertion are two different things," Sen. Nancy Skinner (D) said during the hearing. The bill as amended allows the PUC to factor in security and privacy when evaluating what data are to be made public, she said. Skinner added that the measure would "clearly communicate" to the PUC that the legislature supports usage of anonymized data to enable a more efficient and lower-cost electricity grid.

Several technology and environmental groups support the bill, saying it would point



California State Capitol | © RTO Insider

to areas on the system where distributed energy resources or clean energy technology could be deployed.

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Jan Smutny-Jones: 30 Years of Power

Continued from page 5

energy and climate change. (See [California Senate Passes Bill Mandating 100% RPS](#).) The Assembly Committee on Utilities and Energy is due to review the legislation July 12.

Because the CAISO board is not a policy-making body but follows state policies, some lawmakers and industry stakeholders worry that regionalizing the ISO will dilute the state's influence on the direction of energy planning, Smutny-Jones said. And other states such as Wyoming and Utah don't want to be forced to conform to California energy policies if control of their transmission infrastructure is turned over to a regional ISO.

The Sierra Club says that if PacifiCorp's Utah-based coal generation is brought into CAISO, for example, it will bring coal-fired power into the state, and the environmental group is pressuring the company to retire the assets. But PacificCorp in recent years has instead been investing in the plants.

"If we are expecting other states to respect California's procurement policies, California has to be cognizant of the fact that Utah is not going to start prematurely shutting down coal plants — costing lots of money to its ratepayers — based on trying to expand the ISO," Smutny-Jones said. Most utilities in the West are moving away from coal-fired power anyhow, so there isn't much concern that regionalization will bolster coal generation, he said.

Building trade groups and elected officials are concerned about exporting jobs if renewable generation is shifted to other states. But lack of transmission will create a need for California-based generation, he said, and there are other land-use laws that will reduce development of utility-scale renewable generation in Western desert areas.

The list of groups supporting the regionalization plan includes Natural Resources Defense Council, Sierra Business Council, Solar Energy Industries Association, SunPower, Silicon Valley Leadership Group, and Union of Concerned Scientists.

Regionalization could help California's natural gas-fired plants stay in business and make the market more efficient across the West, he said. The abundance of solar has put pressure on the state's natural gas plants by changing the operational profile of the grid. In 2008, there was only about 300 MW of utility-scale solar in the state, but that figure has reached almost 10,000 MW as the cost of photovoltaics has come down and the state adopted its RPS. This has changed the operating profile for natural gas plants that are not receiving the price signals to stay in business.

"There are significant challenges in the market right now," he said, adding that he is concerned that power plant owners will start shutting down plants and affect reliability. This will be a long-term issue that must be dealt with, he said.

Regardless of the state's policies, a primary attraction for California renewable generation in a regional context is that it is now inexpensive, Smutny-Jones said.

"I don't think Utah necessarily wants to buy power from California because it's green and the right thing to do, but they will buy it if it's cheap."

CAISO NEWS



California Utilities Say Data Bill Poses Security Risk

Continued from page 6

The bill requires the PUC to make capacity, distribution infrastructure and pricing data available to the public in a machine-readable format on the Internet by Jan. 1, 2019. The data would include energy data submitted to the agency as part of utilities' integrated resource plans, descriptions of grid needs or deficiencies, and electricity pricing data. It requires each retail seller of electricity and publicly owned utility to track energy usage for each building in their service territories.

But representatives from California utilities said the bill would provide specific device and setting information that would allow bad actors to physically attack infrastructure. Other disclosed information has the potential to enable people to disable devices on the grid, said John Baranowski, electric distribution planning manager for San Diego Gas & Electric.

"The most concerning aspects of this bill are the implications for grid and cybersecurity," Baranowski said. The utility supplies military bases and the Port of San Diego, "and all of these customers could be exposed to potential risk" if the data are published, he said, especially the more



State Sen. Nancy Skinner, middle, discusses SB 356 at the Assembly committee hearing. | © RTO Insider

precise data on customer load and physical system information. He added that the bill duplicates other PUC efforts, and that there is already plenty of data available on potential DER installations.

Representatives from Pacific Gas and Electric and Southern California Edison also opposed the bill, expressing concern about physical security of infrastructure. The bill would also increase information technology costs to be passed on to ratepayers.

Assemblymember Brian Dahle (R) suggested that third-party data companies are pushing the proposal so they can obtain information that energy companies collect about their customers.

"If you were that third party, you could then target their customers, and that is what I see this doing," Dahle said. He questioned the need for the bill given existing programs.

Skinner said it is currently an onerous process for building owners to get certain electricity data and know whether to invest in energy control or efficiency. The bill streamlines the process for tenants to get data to building owners, and ratepayer advocates could also use the data to benefit consumers, she said.

The committee passed the bill on a 9-4 vote, with Dahle and Autumn Burke (D) abstaining. Committee Chairman Chris Holden (D) voted in favor, saying the amended bill put adequate customer protections in place.

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Monitor, Stakeholders Question EIM Changes

By Jason Fordney

CAISO must address fundamental flaws in its proposal to allow third-party transmission providers to make unused capacity available to the Western Energy Imbalance Market (EIM), according to the ISO's internal Monitor and market participants.

The Department of Market Monitoring said the ISO must consider that the rule change could incentivize third-party transmission providers to withhold transfer capacity from the EIM in order to increase their own revenues from congestion.

The Monitor and EIM participants filed comments with CAISO on a combined set of EIM-related proposals, which also include measures to address monetary charges related to bilateral schedule changes and allow EIM balancing authority areas that wheel power to share in revenue from energy transfers. (See [CAISO Proposes Consolidated EIM Changes](#).)

'Self-defeating'

Current EIM rules allow members to collect congestion revenue from the market through an offset. Under the ISO's proposal, that benefit would be extended to third parties that offer their unused capacity to the market in order to increase transfer capacity between EIM areas.

But the Monitor pointed out that the change could enable a third-party transmission owner to offer transmission for EIM transfers and then reduce the quantity available, creating congestion revenue for its own benefit. The Monitor recommended that the ISO restrict transmission providers' ability to reduce capacity once offered.

Compared with other EIM entities, "third-party transmission providers may be less likely to have ownership interest in generation resources which would be impacted by market prices," the Monitor said.

The Bonneville Power Administration argued that the proposal is "self-defeating" because transmission providers would be decreasing their own congestion revenues. BPA said that "in order to incent third-party transmission to be made available to the EIM, the CAISO needs to find a compensa-

tion method that fairly compensates the third-party contributor even when no congestion exists."

Pacific Gas and Electric questioned whether the proposal creates a disincentive for non-EIM entities to participate more fully in the market. "PG&E would also be interested in the CAISO sharing any studies or insight it has on what transmission transfer capability (i.e., what paths) it anticipates making available via this change," the utility said.

PacifiCorp said "the proposal should explicitly address how market power potential is addressed in light of the possibility of transmission capacity withholding where the entity contributing the transmission may also be a transmission provider or path operator with the ability to constrain dynamic capability and/or all flows on an EIM transfer tie." The company also raised questions about market transparency, saying there are issues about validating congestion rent payments.

Seams Scheduling Mismatch

CAISO is also exploring whether it can use its current "wheeling bid" function to manage bilateral schedule changes originating within or moving across the EIM footprint. Under current EIM practice, such schedule changes made after the submission of hourly base schedules are exposed to real-time imbalance settlement payments that are not known ahead of time.

Adding wheel-out functionality would help market participants avoid imbalance charges by enabling them to pair their scheduled imports with an EIM export closer to the time of delivery. It would also allow for an EIM generating resource to pair its output with an export from the EIM area. Currently there is no functionality to support an import bid that sinks into the EIM area because non-participating load does not bid into the real-time market, CAISO said.

BPA said the proposal does not address a major seams issue between the EIM and Western bilateral markets because load inside the EIM is unable to make schedule changes after the window has closed for hourly base schedules.

"That window is both well ahead of the [Western Electricity Coordinating Council]



Berkshire Hathaway Energy

standard for changes to hourly schedules and also doesn't allow for loads to benefit from 15-minute schedules as they are implemented throughout most of WECC," BPA said.

EIM loads are precluded from adjusting schedules to reflect changes in load or generation and often have to choose between minimizing a scheduling error or being exposed to unknown prices, the result of which may be an actual increase in imbalance in the EIM, BPA said. The power agency said it "encourages the CAISO to develop a mechanism for parties to make scheduling adjustments for bilateral imports into an EIM entity consistent with standard bilateral scheduling practices."

Wheeling Changes

Market participants are also analyzing CAISO's proposal to allow balancing authority areas through which power is wheeled to share in revenue when energy transfers occur. EIM energy transfers through balancing areas are exempt from wheeling charges, and the market rule changes would allow the source, wheel-through and sink balancing areas to share in revenue recovery.

PG&E said that although it is "open to examining the allocation of wheeling benefits holistically at some point, this change would seem to create a somewhat ad hoc form of rate pancaking not aligned with the current EIM structure and principles."

The Monitor said it would examine the wheeling charge and "intends to closely follow the policy development in this area, with the goal of maintaining efficient market design as the ISO seeks to address concerns of equity."

CAISO last month published an issue paper describing the three EIM modifications and expects to submit the proposals to the EIM Governing Body in October and the ISO Board of Governors in November.



PUCT Staff Welcomes Buffett's Oncor Bid; Top Debtor Miffed

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\$11.25 billion for 100% of Oncor. *The Wall Street Journal*, which reported Thursday that the deal was imminent, said the purchase has an enterprise value of about \$18 billion including debt.

BHE said it expects the purchase to close in the fourth quarter, following approvals by federal and state regulators and the judge overseeing EFH's bankruptcy.

The PUC rejected prior bids for Oncor by Florida-based NextEra Energy and Dallas-based Hunt Consolidated. But PUC Executive Director Brian Lloyd issued a statement praising the BHE offer, saying he looks "forward to an expeditious filing of this agreement for the commissioners to consider."

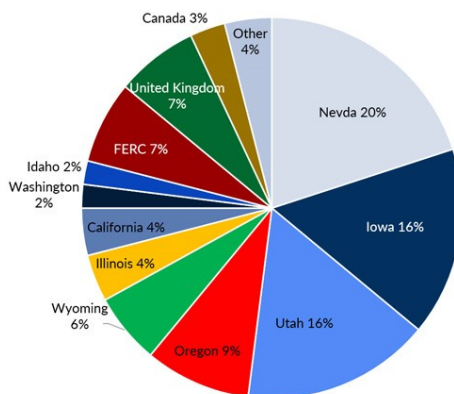
"I applaud both Berkshire Hathaway Energy and Oncor for their productive efforts with PUC staff, the Office of Public Utility Counsel, the Steering Committee of Oncor Cities and Texas Industrial Energy Consumers," he said. "These parties have developed a transaction that fortifies the successful ring-fence protections the commission ordered in 2007. Both BHE and Oncor are proposing additional assurances regarding Oncor's independence, financial integrity and commitments to invest in infrastructure, cybersecurity and system reliability for the more than 10 million Texans served by Oncor."

PUC spokesman Terry Hadley said Lloyd's statement was based on meetings that preceded the merger announcement. "As is typical with this process, the PUC staff and other parties mentioned in the statement met informally to see what can be resolved prior to an official filing," Hadley said. He said the first filings on the deal will likely be with the bankruptcy court.

Winning the Debtors

Winning regulators' approval is only part of the challenge facing Berkshire, however.

Elliott Management, a \$33 billion hedge fund that is the biggest holder of EFH bonds, is signaling it may make a competing bid for Oncor, the *Journal* and Reuters reported late Friday. Elliott added to its stake in the last several months, acquiring them from



Cutline | Source

other funds tired of waiting for an Oncor sale.

Although the fund has no experience in an acquisition of this size, the *Journal* reported, it could threaten a higher bid to force Berkshire to improve its offer, which is insufficient to pay creditors 100 cents on the dollar. With a "blocking" position in two classes of EFH debt, Elliott has a pivotal role in whether creditors accept the Berkshire offer and complete EFH's bankruptcy reorganization. Elliott had previously opposed NextEra's higher bid for Oncor.

Reuters noted that Elliott filed a lawsuit in May asking EFH to consider a debt reorganization that could convert the hedge fund's debt to equity, which could give it control of Oncor. EFH owns 80% of Oncor.

Prior Deals Rejected

The PUC rejected NextEra's \$18.7 billion bid for Oncor in April, ruling that the proposed merger was not in the public interest. (See *NextEra-Oncor Deal Meets Third Denial*.)

The commission said it believed the risks posed by NextEra's acquisition outweighed the benefits, fearing that it would dilute Oncor's credit profile and eliminate local control. The PUC insisted on strong ring-fencing provisions, including "a truly independent" Oncor board with control over decisions on capital expenditures and operating expenses — a requirement NextEra rejected as a "deal-killer."

Hunt saw its bid fall apart last year when the

commission placed conditions on the transaction that the Hunt family was unable to meet. (See *Texas PUC Denies Rehearing on Oncor Sale, Ends Hunt Bid*.)

The Dallas Morning News reported that BHE has agreed to 44 commitments to the PUC, including an independent board that would have complete control over how to use Oncor's dividends. Only two of the 12 board members would be appointed by BHE, the paper said.

BHE says that it does not pay dividends "and can invest our profits back into our businesses to provide additional value for our customers. This relationship to our parent uniquely positions us to take a long-term view and to take on ambitious energy projects that other companies may not be able to afford."

The company also reportedly committed to returning 90% of interest rate savings to customers in rate cuts until the next rate case after one currently pending is final. There would also be no involuntary layoffs or wage and benefit cuts for at least two years for Oncor's 3,700 workers, the *Morning News* said.

"The bankruptcy court has to bless it, and it ultimately has to come to commission," Geoffrey Gay, who represents the Oncor cities steering committee, told the paper. "If they follow the path of failures by Hunt and NextEra, they ought to be able to safely navigate through these obstacles."

BHE contributed almost 10% of the earnings last year to Buffett's Berkshire Hathaway conglomerate, whose holdings include GEICO, Kraft Heinz, Fruit of the Loom, Benjamin Moore and BNSF Railway. The company earned \$24.07 billion last year, and its \$223.6 billion in revenue last year ranked it No. 2 on the *Fortune 500* list, behind only Walmart.

Texas Connections

In an apparent bid to curry favor with state regulators, the second paragraph of the press release announcing the deal noted the conglomerate's other holdings with headquarters in Texas, listing 10 of them.

"Oncor is an excellent fit for Berkshire

Continued on page 10

ERCOT NEWS



PUCT Staff Welcomes Buffett's Oncor Bid; Top Debtor Miffed

Continued from page 9

Hathaway, and we are pleased to make another long-term investment in Texas — when we invest in Texas, we invest big!” Buffett said in a statement. “Oncor is a great company with similar values and outstanding assets.”

Oncor CEO Bob Shapard said the merger would give his company “access to additional operational and financial resources as we continue to position Oncor to support the evolving energy needs of our state.”

“Being part of Berkshire Hathaway Energy is a great outcome for Oncor,” he added in a statement. “Oncor will remain a locally managed Texas company headquartered in Dallas, committed to the communities we serve, and our customers will continue to receive the safe and reliable service they have come to expect from our dedicated team of employees.”

Shapard, who announced plans to retire last October, will become executive chairman of the Oncor board. Senior Vice President and General Counsel Allen Nye will replace him as CEO, as previously announced, Oncor said.

Nye said he was “excited to begin the regu-

latory approval process,” adding “this transaction has significant support across our key stakeholders.”

Resolving Bankruptcy

Oncor has been ring-fenced since 2007, when EFH, a collaboration of several private-equity firms, acquired TXU Corp. in a leveraged buyout. EFH, saddled by nearly \$50 billion in debt when it bet wrong on high gas prices, declared Chapter 11 bankruptcy in 2014.

Creditors last year reached a settlement of the bankruptcy contingent on Oncor's sale. EFH has already spun off generator Luminant and retailer TXU Energy into a new publicly traded company, Vistra Energy. (See [TXU Energy, Luminant Rebrand as Vistra Energy.](#))

With about 121,000 miles of transmission and distribution, Oncor owns and operates the grid for most of North Texas.

It would join BHE's NV Energy, MidAmerican Energy and PacifiCorp, which collectively serve 11.6 million electric customers. As of 2016, BHE held \$85 billion in assets, including almost 236,000 miles of transmission and ownership or control of more than 35 GW of generating capacity. The compa-

nies employ about 21,000.

BHE earned \$2.29 billion last year, 9.5% of the conglomerate's total. Had Oncor's \$431 million in profits been part of BHE in 2016, the energy unit would have generated 11.1% of the conglomerate's earnings.

BHE is headed by CEO Greg Abel, who has been mentioned as a possible successor to the 86-year-old Buffett as chairman of Berkshire.

The Oncor purchase would be Berkshire's largest acquisition since its \$32 billion deal for [Precision Castparts Corp.](#) last year, according to the *Journal*.

With more than \$95 billion in cash and cash equivalents, Buffett bold investors during Berkshire's annual meeting in May, the time may come when the company has more cash than it can profitably use.

“Even at \$9 billion, the takeover of Oncor ... is tens of billions of dollars shy of the mega-deal Berkshire Hathaway Inc. shareholders have anticipated for more than a year,” Tara Lachapelle and Liam Denning wrote in a Bloomberg [Gadfly column](#) Friday. “Costco Wholesale Corp., 3M Co. and Hershey Co. are closer to the kinds of names investors had in mind for Berkshire's next big transaction, as its cash pile grows uncomfortably high.”



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2nd Circuit Upholds Connecticut Renewable Procurement Law

By Michael Kuser

In a decision that could boost prospects for controversial state policies favoring select types of electricity generation, the 2nd U.S. Circuit Court of Appeals rejected a suit claiming that a Connecticut renewable energy procurement law intruded on FERC's authority over wholesale electricity markets.

The June 28 ruling affirmed a lower court decision in favor of a Connecticut law that requires the state to solicit proposals for renewable energy projects and utilities to enter into bilateral contracts with the winners. Renewable energy developer Allco Finance challenged the law's implementation as discriminatory ([16-2946](#), [16-2949](#)).

The court also lifted the injunction it issued last November that blocked the awarding of clean energy contracts by Connecticut, Massachusetts and Rhode Island. (See [Court Halts New England Clean Energy Contracts](#).)

The court's opinion — which reviewed the Connecticut program based on the Supreme Court's 2016 [decision](#) in *Hughes v. Talen* — could influence district courts that are considering motions related to New York and Illinois policies providing zero-emission credits (ZECs) to nuclear plants. (See [Federal Suit Challenges NY Nuclear Subsidies](#).)

FERC Authority

Hughes found that a Maryland plan to spur construction of new natural gas-fired generation encroached on FERC's authority over wholesale prices under the Federal Power Act. But the 2nd Circuit ruling identified a key distinction between the Maryland and Connecticut programs.

"While Maryland sought essentially to override the terms set by the FERC-approved PJM auction, and required transfer of ownership through the FERC-approved auction, Connecticut's program does not condition capacity transfers on any such auction," the appeals court said. "Connecticut, instead, transfers ownership of electricity from one party to another by contract, independent of the auction."

Furthermore, the contracts stemming from

the requests for proposals are just the kind of bilateral agreements already subject to FERC oversight, the court said.

And while the appeals court affirmed that "states may not regulate interstate wholesale sales of electricity unless Congress creates an exception to the FPA," it also determined that the Public Utility Regulatory Policies Act "contains such an exception, permitting states to foster electric generation by certain power production facilities ... that have no more than 80 MW of capacity and use renewable generation technology."

"The decision comes out on the right side legally, clearly on the better side for the states who want to set up programs to encourage renewable energy," said Seth Jaffe of the law firm Foley Hoag, who wrote a [blog post](#) on the case. "The court properly noted that the state really wasn't getting in the way of FERC setting wholesale prices."

In a June 30 [blog post](#), John Moore of the Natural Resources Defense Council wrote that "contrary to the claims of some generators who would like to see state energy laws invalidated per *Hughes*, the 2nd Circuit made clear that *Hughes* applies only to a narrow class of state schemes that, like Maryland's, seek to 'override' the rate set by the FERC-approved auction and instead guarantee a generator a wholly different rate — not policies like the Connecticut clean energy programs."

Dormant Commerce Clause Claims Rejected

The 2nd Circuit also rejected Allco's claims that Connecticut violated the dormant Commerce Clause of the U.S. Constitution: the idea that states may not pass laws discriminating against interstate commerce to protect intrastate commerce. Allco argued Connecticut's law violated the clause by making the state's acceptance of renewable energy credits (RECs) contingent on the ability of a generator to deliver its electricity to the New England grid.

Allco claimed that Connecticut's rules discriminated against the company's solar facility in Georgia by not letting its RECs count toward Connecticut utilities' renewable portfolio standard requirements. The

company also argued that Connecticut discriminated against Allco's New York facility in requiring producers of RECs in adjacent control areas to pay transmission fees in order to sell their credits to Connecticut utilities.

The 2nd Circuit first considered "whether the allegedly competing entities — Allco's Georgia generator, on the one hand, and generators located in ISO-NE and adjacent control areas, on the other — provide different products, i.e., different RECs. We find that they do." (See [NYISO Sees Carbon Adder as Way to Link ZECs to Markets](#).)

The opinion gave "greater weight" to RECs produced by generators able to connect to Connecticut's grid and noted that "Connecticut's RPS program makes geographic distinctions between RECs only insofar as it piggybacks on top of geographic lines drawn by ISO-NE and the [New England Power Pool], both of which are supervised by FERC — not the state of Connecticut."

Regarding the court's dormant Commerce Clause finding, Jaffe said, "I think they got it right; the reasoning is pretty sound, but I can certainly imagine people continuing to litigate this."

The decision said it recognized "the importance of Connecticut's interest in protecting the market for RECs produced within the ISO-NE or in adjacent areas. Connecticut's RPS program serves its legitimate interest in promoting increased production of renewable power generation in the region."

The court's arguments in favor of the Connecticut program "are not that different from arguments that we've sometimes seen rejected by the courts, in saying, 'Well, we understand the policy preference, but you're not allowed to essentially discriminate,'" Jaffe said.



A wind turbine installation on I-95 in Fair Haven, Conn.

ISO-NE NEWS



RI Looks to Sustain Clean Jobs Gains

By Michael Kuser

Rhode Island is seeking ways to sustain a recent surge in jobs stemming from the growth of renewable and distributed energy resources.

Clean energy jobs in the Ocean State have increased by 66% since 2014, with more than 15,300 people now working in the sector, according to a recent report from the state's Office of Energy Resources (OER). Solar employment alone has grown 16% during the past 12 months. Energy efficiency currently represents the largest portion of the clean energy sector, with almost 9,000 workers across the state.

In 2014, the state's legislature established the Renewable Energy Growth (REG) program to promote installation of grid-connected renewables and encourage growth of DERs ([Act H 7727](#)). Supervised by the Rhode Island Public Utilities Commission, the REG program is forecast to account for 160 MW of renewable energy development – valued at \$390 million – by its 2019 end date.

But OER's 2017 Clean Energy Industry [report](#) revealed that the small firms that dominate the distributed generation market are having trouble hiring qualified workers, in part because of the state's high cost of living, competition and the relatively small number of available college graduates.

State officials are working to improve the sector's labor situation. The OER is developing a program to provide funding for clean industry interns and another initiative offering free college tuition for state residents. Gov. Gina Raimondo has proposed the Rhode Island Promise Scholarship, which would include two years of free college at the state community college, but funding is contingent on the fiscal year 2018 budget, which has not been enacted.

Because most of clean energy employment is in installation, some initiatives will be aimed at vocational schools and high schools.

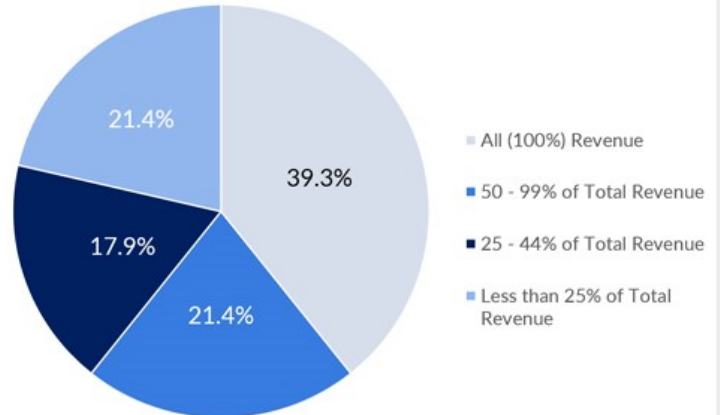
'Real Jobs'

The [Real Jobs RI](#) program, for example, brings employers and educators together to design training courses that focus on the skills needed by the industry.

Carol Grant, head of OER, told *RTO Insider* about several [grants](#) her office is seeking under the program. One focuses on fuel delivery and the other works with the University of Rhode Island to enhance its existing fellowship program.

In partnership with the solar PV industry, OER also applied to the Department of Labor and Training for a grant to increase the pipeline of electricians skilled in PV technology and increasing the number of certified salespeople.

Other policy initiatives will facilitate ties between the marine research and development centers at URI and the Newport Naval Base. The OER is already working with the U.S. Navy on clean energy issues.



RI employers by percent revenue derived from clean energy | *RI OER*

Other Administrative Efforts

The OER also is supporting legislation that would:

- Simplify electrical and building permits by establishing one statewide solar permit application process beginning in 2018.
- Extend and expand the REG program, which helps homeowners, businesses, farmers and municipalities pursue renewable energy projects.
- Continue the state's electric vehicle rebate program, which helps reduce costs for residents purchasing EVs.

A separate Brattle Group [report](#) commissioned by the OER said the REG program will add close to 500 new jobs to the economy annually from 2016 to 2019 because of construction but provide nearly no net gains between 2020 and 2040. The report notes that "while operations and maintenance jobs grow, they are offset by losses in service jobs resulting from modestly higher electricity prices until late in the period."

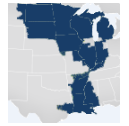
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Monitor Recommends 9 New MISO Market Changes

By Amanda Durish Cook

MISO's Independent Market Monitor still sees room for significant improvement after giving the RTO's markets a passing grade for last year.

"Although the energy markets generally set efficient prices in 2016, we recommend improvements to MISO's price formation through improved shortage pricing and price-setting by peaking resources," Monitor David Patton said in his annual State of the Market [report](#) released late last month, which included nine new recommendations.

The Monitor concluded that — based on the "output gap" measure of economic withholding (the difference between potential and actual energy output) — "potential" withholding of generation represented just 0.11% of load and scarcity mitigation was "infrequently implied."

The report also showed that modest declines in fuel prices contributed to slightly lower energy prices, make-whole payments and congestion costs than in 2015. MISO's peak load of 121 GW was slightly higher than the previous year but well below the forecasted peak of 125.9 GW because of mild weather and lower loads. Real-time congestion, however, rose 4.3% from 2015, totaling about \$1.4 billion, "amongst the highest in the U.S.," according to Patton, which he in part attributed to high outage rates in MISO South.

The Monitor's new market recommendations — many of them already familiar to MISO staff and stakeholders — join a rolling list of unimplemented recommendations dating back to 2010:

- Improve shortage pricing by adopting an improved contingency reserve demand curve that reflects the expected value of lost load (VoLL). Patton recommended earlier this year that the RTO immediately up its \$3,500/MWh VoLL limit to \$9,000/MWh and change its operating reserve demand curve calculation to a sloped curve that he contends would better price shortages. (See [MISO IMM Differ over Scarcity Pricing Changes](#).)

- Transfer control of market-to-market flowgates to improve procedures for M2M activation and coordination. The Monitor would like to see MISO, PJM and SPP become more active in transferring monitoring of constraints when the non-monitoring RTO has all of the transmission loading relief on a flowgate. Last month, MISO and SPP announced plans to begin swapping flowgate control. (See [MISO Interregional Plans with SPP Echo PJM Efforts](#).)
- File changes with FERC to give MISO increased authority to approve generation and transmission planned outages and the ability to coordinate outage schedules in order to lower costs. The Monitor said the move would reduce both outage-related congestion during peak outage season and capacity-related emergency events during the shoulder months. Currently, the RTO can only recommend outage schedules and work with operators to reschedule planned outages when reliability is at risk. Last month, both MISO and the Monitor expressed concern over higher-than-usual planned outages in MISO South during the spring. (See [MISO South Outages Worry RTO, Monitor](#).) The Monitor reported that from January 2016 to May 2017, 25% of all real-time congestion (\$457 million) could be traced to concurrent generation outages.
- Establish regional reserve requirements, creating a local, 30-minute reserve product and developing procurement requirements in areas with voltage and local reliability needs. The Monitor said the reserve product would align the market with reliability needs, allow MISO to accurately price subregional shortages and "lower costs by allowing the markets to satisfy MISO's reliability needs and reducing out-of-market actions by MISO operators." Like several other 2016 State of the Market recommendations, this recommendation appeared earlier this year when the Monitor submitted it for consideration in the RTO's Market Roadmap list of market changes. (See [MISO Steering Committee OKs IMM Proposals for Market Roadmap](#).)
- Change MISO's Day-Ahead Margin

Assistance Payment (DAMAP) and Real-Time Offer Revenue Sufficiency Guarantee Payment (RTORS GP) rules to compensate wind operators whose output more closely matches their day-ahead forecasts and reduce gaming opportunities and unjustified costs. Patton warned the RTO late last year that wind generators appeared to be deliberately over-forecasting their output to inflate payments made through revenue sufficiency guarantees. (See [MISO IMM Sees Deliberate Over-Forecasting by Wind Operators](#).)

- Increase the accuracy of MISO's Look-Ahead Commitment recommendation, which was developed in 2012, and seek to improve resource commitment by modeling system conditions for a three-hour future time frame.
- Improve forecasting incentives for wind resources by creating a method to validate wind supplier forecasts and use the results to alter dispatch instructions if needed, while improving forecasting incentives by modifying deviation thresholds and settlement rules.
- Disqualify from the Planning Resource Auction any resources expected to be unavailable during peak conditions. MISO is currently shopping its own proposal to prohibit resources on extended outages from participating in future auctions or making changes to capture the risk of such outages in loss-of-load-expectation analyses. (See [MISO May Bar Units on Extended Outage from Capacity Auctions](#).)

The Monitor also warned that the \$1.50/MW-day footprint-wide clearing price in MISO's spring capacity auction was too low to be sustainable.

"This is essentially zero. This is not an efficient price under current capacity levels and will motivate poor retirement and export decisions by MISO's competitive suppliers," Patton said.

Despite FERC's rejection of a three-year forward market design for MISO's retail-choice areas, the RTO should pursue "more reasonable and efficient alternatives," he added.

NYISO NEWS



Court Backs NYPSC on Regulating Retail Sales

By Michael Kuser

A New York judge ruled that the state’s Public Service Commission has “the very broadest of powers” to regulate energy service companies and utility rates, especially when seeking to prevent the overcharging of low-income customers.

The June 30 decision by Supreme Court Justice Henry Zwack dismissed a case filed against the commission by the National Energy Marketers Association and three energy service companies (ESCOs), as well as a similar suit by the Retail Energy Supply Association.

The ruling also lifted Zwack’s own temporary injunction against the PSC’s February 2016 “reset order,” which sought to overhaul the business practices of retail energy suppliers and limit the ability of independent energy marketers to sell electricity and gas to low-income customers (15-M-0127, et al.). (See [New York ESCO Order Vacated by Court.](#))

The commission’s order mandated that ESCOs guarantee all mass-market customers an electric rate lower than what their host utility offers, with the exception of “green” offerings, which must include a minimum of 30% renewable energy. The PSC said it intended to combat deceptive practices and boost consumer confidence.

The energy companies argued that the commission overstepped its regulatory authority and violated the privacy of participants in New York’s Home Energy Assistance Program (HEAP).

The injunction did not affect the PSC’s July 2016 moratorium on ESCOs signing up additional low-income customers, which the

commission issued after the failure of a collaborative effort to develop a formula that could guarantee savings. (See [NYPSC Declares Moratorium on Low-Income Sign-ups.](#))

No ‘Independent Rights’ for ESCOs

The notion that ESCOs “have somehow morphed into a separate energy sector with independent rights simply has no basis in law,” Zwack wrote in his opinion. “To the extent that ESCOs believe that their regulation must be minimized because of this also has no basis in law.”

The PSC moved quickly last year to address the judge’s concerns about its procedural practices, and last December it [launched](#) hearings to examine ESCO marketing practices.

‘Immediate Reform’ Needed

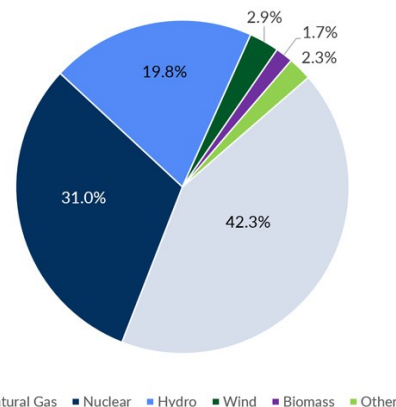
In weighing the privacy of low-income customers against ensuring their right not to overpay for energy services — and against the public’s right not to subsidize ESCOs — the court found the sharing of customers’ HEAP status to be “well within the authority” of the commission.

“What can also be reasonably concluded is that the ESCOs have instead focused on litigation to frustrate the plain purpose of... consumer protection through the adoption of reasonable rates, particularly for those whose utility costs are being subsidized by the public,” the court said. “The ESCO market is in need of immediate reform to protect low-income consumers and to avoid the diminution of taxpayer-funded assistance funds.”

Richard Berkley, director of consumer advocacy group Public Utility Law Project of New York, told *RTO Insider* that ESCO customers are being overcharged millions of dollars a month, “which pays for a lot of lawyering.”

The PSC found that ESCOs overcharged customers by \$819 million between January 2014 and June 2016, with low-income customers representing \$96 million of the overcharges.

A United Way [study](#) in 2016 found that, while federal poverty benchmarks show 15% of New York households experience financial hardship, an additional 29% (2.1 million households) have income above the federal poverty level but still cannot sustain a basic household budget that covers housing, child care, food, transportation and health care.



Sources of electricity generation in New York, 2016 | EIA



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PJM MOPR Order Reversed; FERC Overstepped, Court Says

Continued from page 1

accept proposed rate changes as long as they are just and reasonable, allowing the commission to suggest only “minor” changes, the court said in an opinion written by Judge Brett Kavanaugh. “Section 205 does not allow FERC to suggest modifications that result in an entirely different rate design than the utility’s original proposal or the utility’s prior rate scheme.”

PJM’s proposal would have replaced the unit-specific MOPR exemption with two new ones and extended the mitigation period from one to three years before a unit could bid below the price floor. The change was prompted by generators’ concerns that the unit-specific review, which allowed units to prove confidentially to PJM that its costs were below the required minimum offer, lacked transparency and allowed below-cost bids.

In exchange for eliminating the exemption, load-serving entities won an agreement for two new exemptions: a competitive-entry exemption for units that are unsubsidized or subsidized through a non-discriminatory, state-sponsored procurement process and a self-supply exemption for units intended to meet a portion of an LSE’s needs.

Widely Supported

The compromise proposal was widely supported by PJM stakeholders — the first time that a significant MOPR revision had won a two-thirds sector-weighted vote, the court noted.

Nevertheless, FERC rejected the proposal in May 2013, saying it discouraged new entry because the exemptions were too narrow and the mitigation period was too long



Judge Brett Kavanaugh | *Harvard Law School*

([ER13-535](#)). However, it indicated it would accept the proposal if the unit-specific review were retained and the mitigation period remained unchanged. PJM agreed in a compliance filing adopting FERC’s changes. (See [FERC OKs PJM MOPR Exemptions; Rejects End to Unit-Specific Review](#).)

A dozen stakeholders requested rehearing: NRG Energy, FirstEnergy, the PJM Power Providers Group (P3), Calpine, Exelon, PPL, Public Service Enterprise Group, the Illinois Commerce Commission and consumer advocates from New Jersey, Maryland, Delaware and D.C. (See [FERC won’t Rehear PJM MOPR Ruling](#).)

When FERC [declined](#) rehearing, NRG Power Marketing, GenOn Energy Management and P3 petitioned the D.C. Circuit to review the order. On Friday, the court agreed that FERC “exceeded its authority” by suggesting the modifications that it would approve, even though PJM agreed to them, because that proposed an “entirely new rate scheme.”

Compromise ‘Eviscerated’

Additionally, the court said FERC “largely eviscerated” the compromise that had gotten the original proposal through PJM’s stakeholder process. The court noted that PJM asked FERC to approve the filing “not

as a list of discrete Tariff changes, but as a hard-fought compromise package.”

“PJM’s proposal would have *narrowed* the availability of exemptions to the price floor for some generators that, in the view of some of PJM’s stakeholders, posed a high risk of price suppression,” Kavanaugh wrote. “But FERC’s proposed modifications went in the opposite direction. FERC’s modifications *expanded* the exemptions by layering the two new exemptions on top of unit-specific review and by exempting certain new generators from the price floor after one year instead of after three years. Indeed, FERC’s modifications expanded the scope of the exemptions not just beyond PJM’s original filing, but beyond the scope of the exemptions as they had stood before PJM’s filing.

“Because of FERC’s modifications, some generators can now claim exemptions from the price floor even if they cannot demonstrate that their costs fall below the price floor,” he continued. “In other words, due to FERC’s modifications, PJM’s previous case-by-case methodology no longer controls.”

PJM Agreement Irrelevant

The fact that PJM agreed to FERC’s suggestions “does not cure the harms” to its stakeholders, the court said.

“When FERC imposes an entirely new rate scheme in response to a utility’s proposal, the utility’s customers do not have adequate notice of the proposed rate changes or an adequate opportunity to comment on the proposed changes,” it said. “Generators and load-serving entities had an opportunity to comment on the original compromise proposal submitted by PJM. But they did not have an opportunity to comment on FERC’s modifications before FERC issued its decision.”

NRG was pleased with the ruling.

“This decision effectively calls for a rewrite of market rules that effectively allowed new entrants to distort the energy and capacity markets by subsidizing new entry,” spokesman David Gaier said. “We’re hopeful that any new rules will level the playing field and support fair and equitable electricity markets for all generating resources.”

“Section 205 does not allow FERC to suggest modifications that result in an entirely different rate design than the utility’s original proposal or the utility’s prior rate scheme.”

Judge Brett Kavanaugh, D.C. Circuit Court



Traders: PJM Delay, Secret Support Could Result in Pa. Tax

Continued from page 1

prehensive response. Instead, they contend, PJM secretly supported the idea, then withheld that information when alerting stakeholders just weeks before the state's budget deadline.

PJM has denied supporting the tax and says it followed its normal procedure in the matter.

Traders are hoping to head off the proposed tax this week, as state lawmakers attempt to close a \$2.2 billion budget hole that has Standard and Poor's threatening to downgrade the state's already low credit rating.

No Rules

The incident has raised questions about when PJM should alert its membership about interactions with other organizations. The RTO currently has no rules on the subject and says that, up until now, stakeholders have always trusted its judgment in such matters.

The controversy also marks another chapter in an ongoing feud between PJM and Shawn Sheehan, president of XO Energy, who has accused RTO staff of bias against financial-sector stakeholders.



Sheehan

(See [PJM Board Disputes UTC Trader's Accusations](#).) Sheehan also is fighting in federal court over FERC's attempt to collect \$42 million in fines and profits for allegedly risk-free up-to-congestion (UTC) trades. (See [Traders Deny FERC Charges: Seek Independent Review](#).)

On June 26, Sheehan sent a [letter](#) to PJM questioning its "independence and neutrality" and complaining that RTO officials only belatedly informed traders of the proposed tax. "Virtual transactions have been under attack — throughout the PJM stakeholder process as well as by physical asset owners, load-serving entities, the Independent Market Monitor and now PJM," he wrote.

Sheehan's letter cited PJM's proposals to impose deviation charges on UTCs and reduce the number of biddable locations for

them before turning to what he said "appears to be a coordinated effort between PJM senior staff and members of the Pennsylvania state legislature that would result in a gross tax on virtual transactions in PJM." (See [PJM MRC OKs Uplift Solution over Financial Marketers' Opposition](#).)

PJM, which said it has consistently opposed the tax proposal, said it was first contacted in January by Pennsylvania legislative staffers seeking general education on its markets.

CFO Suzanne Daugherty told *RTO Insider* that she receives "dozens" of similar inquiries each month. Alerting stakeholders to all those inquiries would create an "unmanageable" volume of information, she said, so stakeholders have always trusted the RTO's judgment on what needs to be disclosed to them.



Daugherty

"It is actually very common for PJM to get requests at the state level," Daugherty said. "We don't always know that when we're providing that education, why we've been asked for it or what the information might be used for."

PJM was asked to provide the same information in May but with state Department of Revenue representatives in the room. It then became clear that the state was looking at PJM's markets as a potential source of tax revenue, Daugherty said.

According to Daugherty, PJM officials told the staffers the RTO opposed any new taxes on its membership and presented them with information — such as potential jurisdictional issues — to support their position. "We thought there might have been some possibility that PJM's points, along with any other discussions that might have occurred in Harrisburg, had dissuaded them from pursuing any additional tax," she said.

Daugherty said the issue was then discussed at PJM's Finance Committee meeting on May 15, although the [agenda](#) for the meeting doesn't list the topic and the RTO has not posted any minutes. Four stakeholders who attended the Finance Committee meeting — GT Power Group's Dave Pratzon,

"We thought there might have been some possibility that PJM's points ... had dissuaded them from pursuing any additional tax."

PJM CFO Suzanne Daugherty

Gary Greiner of Public Service Enterprise Group, FirstEnergy's Jim Benchek and Pennsylvania Assistant Consumer Advocate David Evrard — confirmed the issue was discussed there.

Pratzon said the issue came up when he asked PJM to provide an update. He said he was not certain when or how he first learned of the proposal.

Evrard said PJM reported that it gave "Pennsylvania officials reason to believe that a tax on physical transactions was not feasible, but that whatever the rationale for that position was, it did not apply equally to virtual transactions." He also confirmed that PJM indicated it was not advocating for the tax.

Narrowed Focus

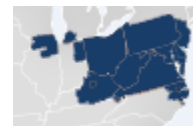
However, legislative staffers returned in mid-June, announcing they had narrowed their interest to a potential tax on virtual financial transactions, such as UTCs. That's when Daugherty began alerting financial stakeholders, including attorney Ruta Skucas, who represents the Financial Marketers Coalition.

Skucas said she received a call from Daugherty on June 13 and immediately alerted members of the coalition, including Wesley Allen of Red Wolf Energy Trading and XO General Counsel Carey Drangula. XO arranged a call the following day with Daugherty, who urged the company to contact state legislators "to try to put a stop to this," Sheehan said in an interview. XO set up meetings with state legislators for the following week to oppose the idea.

Tracy Lawless, a government affairs adviser for XO's lobbying firm, K&L Gates, said the idea began in the office of Senate Majority Leader Jake Corman (R), whose general counsel is Rik Hull, former counsel to state

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PJM NEWS



Traders: PJM Delay, Secret Support Could Result in Pa. Tax

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Public Utility Commissioner and FERC nominee Robert Powelson.

Lawless said the idea was delegated to Sen. Ryan Aument (R), a member of the Senate Finance Committee, whose chief of staff, Jake Smeltz, served as president of the Electric Power Generation Association between 2010 and 2014. Smeltz “was tapped to investigate various revenue ideas based on his industry experience,” Lawless said.



Smeltz

Through Aument’s receptionist, Smeltz declined to comment.

In his letter, Sheehan said that he was told that state officials had determined that although physical transactions could not be taxed — presumably because of federal jurisdiction over wholesale power sales — “virtual transactions could be subject to a levy because they are allegedly only transacted in Norristown, Pa., and allegedly do not have a direct connection to the physical grid.”

Sheehan said members of his company met with members of the legislature the prior week and “were surprised to learn from professional staff that the proposed tax was supported by PJM. There was also some suggestion that a tax on virtual transactions could help fund potential nuclear subsidies.”

Significant Opposition

If some senators remain interested, they seem to be on their own, according to tax opponents. “The House [of Representatives] wants nothing to do with supporting a virtual transaction tax,” Drangula said, relaying information she said she received from XO’s lobbyists.

“Any policy that makes it more expensive to buy or move energy in this state is a bad idea,” said Kevin Sunday, director of government affairs at the Pennsylvania Chamber of Business and Industry. “There’s no doubt higher electricity taxes will have a consumer impact, felt hardest by large industrials who go out and shop for their own power.”

However, financial traders aren’t assuming the idea is a dead letter.

The Republican-controlled General Assembly is struggling to find ways to pay for a \$32 billion spending bill it approved last month.

On Thursday, Standard and Poor’s said Pennsylvania’s credit rating — already one of the worst among the states — could be reduced further unless it shores up its finances.

On Monday, Gov. Tom Wolf (D) announced he would allow the bill to become law without his signature even though lawmakers haven’t resolved how to pay for it. Republicans previously rejected Wolf’s proposals to raise revenue, which included a tax on Marcellus Shale natural gas production.

“In the coming days, it is my hope that the General Assembly will come together to pass a responsible solution to balance our books,” Wolf said in a statement. “There are many options available to balance the budget in the long term like those I presented earlier this year. Our creditors and the people of Pennsylvania understand a responsible resolution must take real and necessary steps to improve Pennsylvania’s fiscal future.”

“That’s when this potential tax will be considered,” Skucas said. “It’s still very much live, and it will be under consideration.”

“A tax such as this could be dropped into a package of Pennsylvania tax code changes,”

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Traders: PJM Delay, Secret Support Could Result in Pa. Tax

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Drangula said. “If they were to go that route ... we might see this in proposed legislation. ... Even if this proposed tax slips through the cracks this time around, that doesn’t prevent it from resurfacing at some point in the future.”

‘Both Sides of its Mouth’

Traders say they want to know why PJM took so long to tell anyone about the tax proposal.

CEO Andy Ott responded to Sheehan’s June 26 letter three days later, calling it “unfortunate” that XO came away with “misconceptions” about the RTO’s position. Sheehan doubled down, forwarding the board an email in which Drangula recounted her interactions with legislative staffers who she said told her they received

“support” from PJM for the tax proposal and warned XO that “PJM speaks out of both sides of its mouth.”

In an interview, Drangula declined to name the staffers.

Sheehan also said that he has witnessed PJM staff take one position in private conversations and another one in public discussion.

“We can absolutely attest to that” occurring at least five times in the last four years, Sheehan said. He and Red Wolf’s Allen cited several negotiations involving the Energy Market Uplift Senior Task Force, including one in which they said PJM failed to tell the traders it was going to propose a package opposed to the traders’ interests the following day. On another occasion they said PJM abruptly pivoted from its recommendations in a whitepaper on virtual transactions, supporting an opposite plan at the last minute.

Daugherty echoed Ott’s comment that the

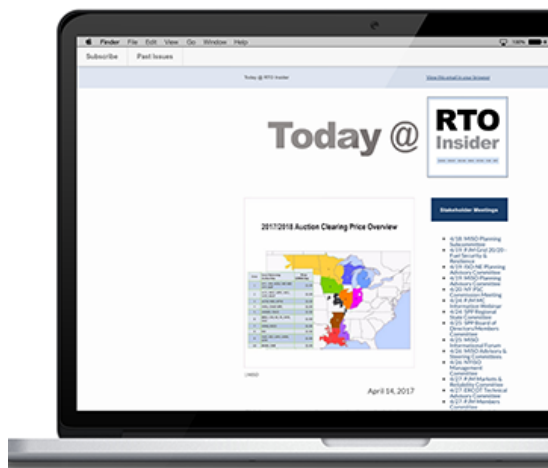
traders’ accusation is “unfortunate” but couldn’t provide any explanation for where it might have originated. She and Denise Foster, PJM’s vice president of state and member services, have been involved in every correspondence or interaction on the issue and the RTO’s opposition has always been the message, she said.

According to Daugherty, PJM didn’t alert stakeholders earlier because, prior to mid-June, it wasn’t clear what the tax might look like or who might be affected. PJM has no rules in its Tariff, operating agreement or manuals regarding what or when it must disclose external interactions to stakeholders, she said. She added that PJM doesn’t plan to address this issue with stakeholders at any committee meetings.

“In the 20-plus years that PJM has been an ISO/RTO, we’ve used our judgment essentially without any member questioning of

Continued on page 19

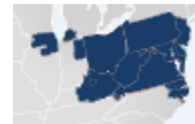
If You’re not at the Table, You May be on the Menu



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PJM Seeks to Solidify Market Rules for DER

By Rory D. Sweeney

VALLEY FORGE, Pa. — Progress in PJM's special session of the Market Implementation Committee on distributed energy resources has reached a point where details matter.

Stakeholders spent much of the group's meeting on Friday clarifying definitions, debating whether certain terms should be used and delineating what is in and out of the group's scope.

"Just because something's not in the Tariff doesn't mean it's not a defined term used in the business and a good utility practice," Calpine's David "Scarp" Scarpignato said. "Some of these are recognized terms from an engineer's standpoint."

Among the questions is whether the aggregation rules will focus on grouping small projects to reach the 100-kW minimum for participating in PJM markets or expand to cover grouping multiple larger projects that are at the same site.

"In my mind, we were talking about aggregation mostly to meet that market threshold," said Drew Adams of A.F. Mensah. "It sounds like the aggregation discussion has expand-



Left to right: Joe Ciabattoni, PJM; Scarp, Calpine; Drew Adams, A.F. Mensah | © RTO Insider

ed a little bit beyond that."

During the discussion, stakeholders largely agreed that electric distribution companies should retain a substantial amount of control over project approval, such as defining the size, location and type of aggregation projects they will accept.

John Farber of the Delaware Public Service Commission said the group should also decide rules on whether projects can cross distribution service territories. He said it will be important to consider how electric vehicles are handled because definitions that are too restrictive could inhibit their development.

"I'm not sure how these resources are going

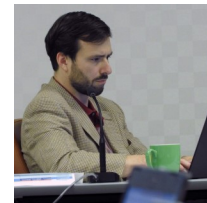
to develop, but I'm hesitant to develop rules that are too restrictive," Farber said.

PJM staff also presented an informal poll to determine stakeholder interests in how DER is incorporated into ancillary services markets. PJM's Andrew Levitt said one consideration will be how much visibility the RTO should have into resources that operate behind a load. When it sells into the wholesale markets, PJM will be able to monitor its performance. However, when it is simply reducing the owner's load, the current rules don't provide the same information.

Levitt presented a proposed rule to require submetering of DERs at the resource before it's tied to the load.

"This is the most substantial change in the whole proposal," Levitt said. "Your performance of ancillary services would be measured at the DER rather than measured at the point of interconnection, as it would be under the status quo."

The group has no meetings planned until August, when it will meet three times.



Levitt

Traders: PJM Delay, Secret Support Could Result in Pa. Tax

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when we engage them on information that we're sharing with states," Daugherty said.

'Core Values'

Sheehan and Allen aren't satisfied with PJM's judgment in this case.

"It's only by word of mouth coming from other market participants that I heard about this when I did," Allen said. "Otherwise, I wouldn't have found out about it until XO's letters to the board."

Sheehan said part of his motivation for sending the June 26 letter was to raise awareness. Beyond posting the letters, PJM has made no other announcement about the issue either on its website or through com-

munication channels.

"Whatever [PJM's] five core values are, it seems that they have broken each one of those core values with this matter," Sheehan said, referring to the RTO's employee Code of Conduct, which lists as core values integrity, communication, accountability, respect and excellence.

Under communication, PJM staff pledge to "distribute information promptly to all who are affected" and to "proactively share information, expertise, processes and ideas openly and accurately."

"I don't remember ever authorizing PJM to negotiate or transact on the behalf of XO Energy," Sheehan said. "I don't know what is really true or what is not true, but had there been transparency during the process, we would all know what is true."

FERC Litigation

In addition to his dustups with PJM, Sheehan has been involved in an expensive fight with FERC over the commission's demand for \$42 million in fines and disgorged profits from a company he previously led, Coaltrain Energy.

Coaltrain is one of at least three firms accused by FERC of market manipulation for profiting on line-loss rebates from what the commission called risk-free UTC trades in PJM (IN16-4). (See [Traders Deny FERC Charges; Seek Independent Review](#).)

Coaltrain maintains that it didn't manipulate the market, that its trading strategy wasn't deceptive and that it didn't engage in wash trades or try to affect market prices. The case is pending in the U.S. District Court for Southern Ohio (2:16-cv-00732).

Dominion Announces 12-MW Offshore Wind Project, 2nd in US

By Rich Heidorn Jr.

Dominion Energy announced Monday it will build the second offshore wind project in the U.S.: two 6-MW turbines about 27 miles off the coast of Virginia Beach.

The Coastal Virginia Offshore Wind project, which would be the first offshore project connecting to PJM, follows the 30-MW, five-turbine Block Island Wind Farm off Rhode Island, which went into operation in December.

Dominion said DONG Energy of Denmark will begin engineering and development work immediately on the project. The turbines should be installed by the end of 2020, assuming no delays from weather or protected species migration.

The project will build on preparatory work performed under the Virginia Offshore Wind Technology Assessment [Project](#) and be located on a 2,135-acre site leased by the state Department of Mines, Minerals and Energy. Power will be delivered via a buried 34-kV distribution line to a connection point near Marine Corps Base Camp Pendleton.

The state's site is adjacent to the 112,800-acre site leased by Dominion from the U.S. Bureau of Ocean Energy Management (BOEM), an area with the capacity for 2,000 MW.

"Today marks the first step in what I expect to be the deployment of hundreds of wind turbines off Virginia's coast that will further diversify our energy production portfolio, create thousands of jobs and reduce carbon emissions in the commonwealth," said Gov. Terry McAuliffe, who attended the announcement at the Portsmouth Marine Terminal in the Hampton Roads area of Virginia. "Hampton Roads has the ideal port assets and talented workforce to attract and house the offshore wind business supply chain to support not only Virginia's commercial wind area but also wind farms under development in Massachusetts, New York and Maryland."

"While we have faced many technological challenges and even more doubters as we advanced this project, we have been steadfast in our commitment to our customers and the communities we serve," Dominion CEO Thomas Farrell II said.

Dominion lost \$40 million in federal grants for the project last year when the U.S. Department of Energy said it wasn't moving fast enough. In addition, bids on construction came in at about \$400 million, almost double Dominion's \$230 million projection. The project was revived after DONG agreed to build it under a fixed-price contract of about \$300 million.

Farrell's comment also seemed an apparent response to critics who had worried that the utility would not develop its wind energy area, which it won in a BOEM lease auction in September 2013. (See [Will an Old Utility Learn New Tricks?](#))

The company's 2017 integrated resource [plan](#), filed May 1, estimates the cost of offshore wind at \$339/MWh, more than triple that for onshore wind (\$99/MWh) and almost five times the cost of a 3x1 combined cycle plant (\$70/MWh).

The high cost of offshore wind is particularly challenging in Virginia: The state does not have a mandatory renewable portfolio standard nor retail choice, which could create a niche for a green alternative. Despite that, Dominion has set a voluntary goal to obtain 15% of its power from renewables by 2025.

Excluding pump storage (9%), renewables represents 3% of its current capacity.



Left to right: Virginia Gov. Terry McAuliffe; Dominion CEO Thomas F. Farrell II; Francis Slingsby, DONG Energy's head of strategic partnerships in North America; and Power Generation Group CEO Paul Koontz. | Dominion

"We welcome the news that Dominion is making steps to bring offshore wind to Virginia. But this should have happened years ago," said Mike Tidwell, executive director of the Chesapeake Climate Action Network. "Dominion already lost a federal grant for \$40 million for dragging its feet on the project. Will ratepayers have to foot that bill?"

"Meanwhile, Dominion continues to push for dangerous climate-warming fossil fuel projects like the Atlantic Coast pipeline, along with the support of Gov. Terry McAuliffe," he continued. "The offshore wind pilot project is nowhere near what's needed to bring us to a clean energy economy. If McAuliffe and Dominion were truly serious about helping Virginia become a leader in clean energy, they would stop pushing for fracked-gas pipelines and start focusing on expanding clean energy."

Eileen Levandoski, assistant director of the Sierra Club's Virginia Chapter, also criticized the pace of Dominion's progress. "While the commitment to 12 MW by 2020 is helpful, the crisis we face with climate change demands that Dominion also engage aggressively on the commercial lease area and immediately commit to 400 [MW] by 2022 and 2,000 by 2030," she said.

Dominion officials say the initial project will test whether the turbines can withstand hurricanes, and that it will not interfere with marine life and whale migrations. If turbine prices continue to decline, a larger project will begin operating by the mid-2020s, they said.



Dominion

COMPANY BRIEFS

Regulators Order Southern Co. To Stop Building Kemper

The Mississippi Public Service Commission on Thursday ordered Southern Co. to stop building its \$7.5 billion clean-coal Kemper plant and convert the facility to natural gas.

Under the order, Southern subsidiary Mississippi Power has 90 days to come up with a settlement switching the plant to natural gas, while protecting customers from the escalating costs of the project, which was originally budgeted at \$2.9 billion.

Last month, the commission called upon Mississippi Power to abandon the plant's "unproven technologies."

More: [Atlanta Business Chronicle](#)

Southern Co. Infuses Mississippi Power with \$1B

Southern Co. has infused \$1 billion in additional capital into Mississippi Power after it halted efforts last month to complete the lignite coal technology at its Kemper plant.

The Southern subsidiary used the equity contribution to pay \$300 million on a \$1.2 billion unsecured loan, \$591 million on a loan from Southern and \$10 million on bank loans, according to a filing with the U.S. Securities and Exchange Commission.

Southern's shares fell about 7% since Mississippi regulators told the utility last month that it should absorb \$6.5 billion in losses

and cost overruns at the Kemper plant. A decline in its stock prices over the past two weeks erased about \$3.7 billion of Southern's stock market value.

More: [The Atlanta Journal-Constitution](#)

Report Finds Rising Costs to Acquire Solar Customers

The cost for a solar installer to acquire a residential customer in the U.S. has increased from 41 cents/W in 2013 (or \$2,870 per customer based on a 7-kW system) to 52 cents/W in 2016 (\$3,668 per customer), according to a report by GTM Research.

"U.S. Residential Solar PV Customer Acquisition 2017: Current and Projected Costs and Channel Strategies" expects the costs will rise again this year to \$3,898 per customer. It forecasts that by 2022 customer acquisition costs will fall to 40 cents/W but will make up 25% of a residential system's \$2/W cost.

The report also found smaller solar installers tend to benefit from marketing by larger players. SolarCity, Vivint Solar and Sunrun average 70 cents/W versus 28 to 36 cents/W for smaller local players.

More: [Greentech Media](#)

Appalachian Power Seeks to Acquire 2 Wind Farms

Appalachian Power on Wednesday pro-



posed purchasing two wind farms, which would be the first two farms it directly owns and operates if regulators approve the purchases.

Both wind farms — a 175-MW facility in Ohio and a 50-MW facility in West Virginia — are being developed by Invenergy. Both are due to come online by 2019.

The utility currently has a total of 375 MW of wind generation and anticipates another 120 MW coming online in 2018.

More: [The Roanoke Times](#)

Volvo to Make All EVs, Hybrids Starting with 2019 Models



Volvo Cars has announced that all vehicle models it introduces starting with 2019 will be either hybrids or powered solely by batteries.

The automaker still will produce older models with conventional engines after 2019.

Five models that it plans to introduce between 2019 and 2021 will run solely on electric power, including two models sold under its Polestar brand, which the company is positioning as a maker of high-performance electrified cars.

More: [The New York Times](#)

Reed Smith Adds Honorable, 2 Others to Boost FERC Practice

Former FERC Commissioner Colette Honorable has joined Reed Smith as a partner in the law firm's D.C. office, along with Regina Y. Speed-Bost, former chair of Schiff Hardin's Energy Group.

The two will join Reed Smith's energy and natural resources (ENR) practice, "spearheading the firm's FERC offering," Reed Smith said in a press [release](#). Debra Ann Palmer, a colleague of Speed-Bost's at [Schiff Hardin](#), also is moving to the firm's ENR practice as counsel.

"This addition underscores our commitment to building out our stateside energy offering in order to meet our energy and commodities clients' needs, which include responding rapidly and proactively to fluid policies, regulations and enforcement initiatives," said

ENR Chair Prajakt Samant. Founded in 1877, [Reed Smith](#) has more than 1,700 lawyers in 27 offices in the U.S., Europe, Asia and the Middle East.

Honorable, a former Arkansas Public Service Commissioner and past president of the National Association of Regulatory Utility Commissioners, joined FERC in December 2014 and left June 30 at the expiration of her term. President Trump has nominated Richard Glick, general counsel for the Democrats on the Senate Energy and Natural Resources Committee, to replace her. (See [Trump Taps Senate Aide, Former Lobbyist for FERC](#).)

Before joining the Arkansas PSC, Honorable served as chief of staff to then Arkansas Attorney General Mike Beebe, and as an

assistant attorney general handling consumer protection, civil litigation and Medicaid fraud. She is a graduate of the University of Memphis and the University of Arkansas at Little Rock School of Law.

Speed-Bost, a former FERC trial attorney and adviser to former Commissioner William Massey, is a graduate of Dartmouth College and Georgetown University Law Center.

Palmer, a graduate of Case Western Reserve School of Law, has expertise in natural gas pipeline regulation and Commodity Futures Trading Commission rules, and has represented clients before FERC's Office of Enforcement.

— Rich Heidorn Jr.

FEDERAL BRIEFS

Nuclear Facilities Attacked by Malicious Code, FBI and DHS Say



Wolf Creek nuclear plant in Coffey County, Kan. The plant's operating company was one of those targeted by hackers, according to a joint DHS-FBI report. | *Wolf Creek Nuclear Operating Corp.*

Hackers have been using malicious code since May to penetrate the computer networks of nuclear power stations and other energy facilities in the U.S. and other countries, according to a recent joint report by the Department of Homeland Security and FBI.

The report, obtained by *The New York Times* and confirmed by security specialists, carried an urgent amber warning, which is the second-highest rating for the sensitivity of the threat.

In a joint statement, Homeland Security and the FBI said there is "no indication of a threat to public safety, as any potential impact appears to be limited to administrative and business networks."

More: [*The New York Times*](#)

Monthly Renewable Gen. Beats Nuclear for 1st Time Since 1984

March and April marked the first time since July 1984 that U.S. monthly electricity generation from utility-scale renewable sources surpassed nuclear generation, according to data from the U.S. Energy Information Administration.

Nuclear generation in April was at its lowest monthly level since April 2014. But EIA predicts monthly nuclear will exceed renewables again this summer and for all of 2017.

Conventional hydroelectric generation totaled 30 billion kWh in March, the highest level in nearly six years.

More: [*Energy Information Administration*](#)

Power Plant Construction Costs Falling in Recent Years

Capacity-weighted average construction

costs for new, utility-scale electric generators declined in recent years, according to data from the U.S. Energy Information Administration.

The capacity-weighted cost of installing wind turbines was \$1,661/kW in 2015, a 12% drop from 2013. The average cost of natural gas generators installed in 2015 was \$696/kW, a 28% decline from 2013. The cost of utility-scale solar photovoltaic generators fell 21% between 2013 and 2015, from \$3,705/kW to \$2,921/kW.

Each year's data are for projects completed in that year. Government grants, tax benefits and other incentives are excluded from the costs.

More: [*Energy Information Administration*](#)

EPA Proposes Lower Biofuel Quotas for 2018



An ethanol fuel plant in West Burlington, Iowa.

EPA on Wednesday proposed lower biofuel quotas for 2018 than those currently in effect under the Renewable Fuel Standard.

The proposal calls for refiners to use 19.24 billion gallons of renewable fuels in 2018, a slight drop from the 19.28 billion gallons required in 2017 and about 25% lower than the target Congress outlined in 2007.

EPA would keep the 2018 target for conventional, corn-based ethanol at 15 billion gallons and biomass diesel at 2.1 billion gallons, unchanged from 2017, while lowering targets for cellulosic and advanced biofuels.

More: [*The Hill*](#)

Calif., NM Sue over BLM's Halting of Methane Rules

Attorneys general from California and New Mexico filed a lawsuit Wednesday challenging a June 15 decision by the Bureau of Land Management to "postpone" regulations

reducing emissions of methane gas from oil and gas wells on federal lands.

The regulations, which were approved by the Obama administration and took effect on Jan. 17, required producers of oil and natural gas on federal and tribal lands to reduce flaring and venting that lessens gas production while leaking methane.

The suit, filed in a federal court in San Francisco, argues that it is legally impossible to "postpone" a regulation that has already taken effect and that the agency failed to seek public input, as required by law.

More: [*San Francisco Chronicle*](#)

Fossil Fuels Form Bulk of US Energy Mix as Renewables Rise

In 2016, fossil fuels accounted for 81% of total U.S. energy consumption, while renewables made up 10.5%, according to data from the U.S. Energy Information Administration.

The share from fossil fuels was the lowest it's been in the past century, while the share from renewables was its largest since the 1930s.

The decline in fossil fuel share stems mainly from declining coal consumption, which fell nearly 9% in 2016, following a 14% drop in 2015.

More: [*Energy Information Administration*](#)

EPA to Consider How Regulations Impact Jobs, Despite Court Ruling



EPA is not required to estimate the number of mining jobs that may be lost because of air pollution regula-

tions, a federal appeals court has ruled. But the agency said under President Trump it would consider the impact anyway.

The ruling by the 4th U.S. Circuit Court of Appeals reverses a West Virginia judge's decision siding with Murray Energy and other companies that argued EPA should have to report on potential job losses caused by its policies. The Obama administration had appealed that ruling.

A Murray Energy spokesman said the company would appeal.

More: [*The Associated Press*](#)

STATE BRIEFS

CALIFORNIA

Governor Announces Global Environmental Summit for 2018



Gov. Jerry Brown unveiled plans for a global environmental summit in San Francisco next year to an international audience of climate activists Thursday.

In a video shown to attendees of the Global Citizen Festival in Hamburg, Germany, coinciding with President Trump's arrival there for the G-20 summit, Brown said Trump "doesn't speak for the rest of America" and that people across the U.S. believe it's time to join together to combat climate change.

Canadian Prime Minister Justin Trudeau, Argentinian President Mauricio Macri and other leaders spoke about climate change and education to the crowd of 12,000. Trump was not invited to speak because his policies don't align with the festival's goal of supporting global health, climate and gender equality, a source involved in organizing the festival said.

More: [Los Angeles Times](#)

MINNESOTA

Landfills Sue State over Push to Burn Garbage for Energy

Four landfills are suing the Pollution Control Agency, alleging it is misinterpreting a law from the 1980s that prioritizes burning the metro area's garbage to generate energy.

This past spring, the agency fined the landfills, owned by Waste Management and Republic Services, \$20,000 each for accepting garbage that could have been burned at a local incinerator. The landfills are asking the court to throw out the penalties, arguing the law is being misinterpreted to hold them primarily accountable. They maintain compliance is impossible without overhauling communication between themselves, haulers, incinerators

and other trash-related companies.

Currently, trash in the metro area is certified annually by counties as "unprocessible." Waste Management said it does not learn whether a load of trash could have been burned until long after it has accepted it.

More: [Star Tribune](#)

NEW JERSEY

Regulators Double Funding For Town Center Microgrids

The Board of Public Utilities more than doubled its budget for town center microgrids from \$1 million to more than \$2 million, approving 13 projects rather than the five to 12 projects it originally planned to approve.

The microgrids will serve critical buildings — such as hospitals, police stations and fire stations — to keep crucial public services operating during a power outage. The program, which was open to storm-vulnerable areas, seeks to improve energy resiliency following the state's experience with the devastation caused by Superstorm Sandy.

The board granted the funds so that the selected communities could begin feasibility studies.

More: [Microgrid Knowledge](#)

NORTH CAROLINA

Wind Farms Threaten to Leave State If Moratorium Signed into Law

Two proposed wind farms that were expected to apply for permits this year are threatening to leave the state if Gov. Roy Cooper signs an 18-month moratorium on wind farm permits into law.

The moratorium, inserted during the last week of the legislative session into a solar energy bill, would not allow any wind farm to receive a state permit until Dec. 31, 2018. It also requires a study to identify locations where turbines would interfere with military training. Senate Majority Leader Harry Brown, author of the moratorium and study requirement, said he is concerned about the farms because the U.S. Department of Defense can shut down and relocate military bases if they are incompatible with local surroundings.

Cooper has until July 30 to decide whether to sign the bill, which will affect projects proposed by Apex Clean Energy and Renewable Energy Systems. Wind farms already require clearance from the Defense Department and Federal Aviation Administration before they can be built.

More: [The News & Observer](#)

OHIO

PUCO Chairman Can Continue Serving on Governor's Cabinet

The chairman of the Public Utilities Commission will remain as one of Gov. John Kasich's 25 cabinet members under a two-year budget bill signed into law Friday.

The bill removed a Senate-added provision that would have banned Chairman Asim Haque from serving. The provision was added because the commission is supposed to be impartial, Senate Republican spokesman John Fortney said.

More: [Columbus Business First](#)



Haque

VIRGINIA

Feds Approve Tx Line Across James River near Historic Area

The U.S. Army Corps of Engineers has granted final approval for Dominion Energy to build a 500-kV transmission line carried by 17 towers across the James River near Historic Jamestown.

Dominion says the project — which will require more than 40 transmission towers in the area, some nearly as high as 300 feet — is necessary to provide power to the Peninsula region because federal regulations are forcing the shutdown of two coal-burning power plants near Yorktown.

Environmentalists and historians oppose the project, arguing that it spoils a view that has barely changed since Capt. John Smith helped found the first permanent English settlement there more than 400 years ago and endangers a fragile population of river sturgeon.

More: [The Washington Post](#)

Maine Gov. Vetoes Net Metering Bill; Override Likely

By Michael Kuser

Maine Gov. Paul LePage followed through Monday on his promise to veto a solar net metering bill, calling it bad policy that would “result in irrational outcomes.”

The state Legislature passed the bill (LD 1504) with a bipartisan, veto-proof majority June 28. The governor waited to act until the last moment of the 10 business days that Maine provides for a veto.

“This bill is poor policy, and as I have noted many times, net energy billing subsidizes the cost of solar panels at the expense of the elderly and poor who can least afford it,” the governor said in a veto letter to the Legislature. “Even the Natural Resources Council of Maine has acknowledged that net energy billing ‘is not a preferred long-term policy.’ However, rather than moving away from this practice to a more sustainable approach, LD 1504 instead sets net energy billing into statute in perpetuity.”

“[LePage’s] characterizations of the bill are inaccurate,” responded Emily Green, an attorney for the Conservation Law Foundation. “He basically says the bill is going to make net metering long-term policy and that’s clearly not the goal or the intent of the legislation.”

Increased Participation

The bill would continue allowing residents who generate more power than they consume to earn credits for the retail price of that electricity, minus transmission and distribution costs. But it would require the Public Utilities Commission to recommend ways to transition away from net metering before the Legislature convenes in 2019, with solar power generators to be paid less starting in 2018.

The bill also raises the cap from 10 to 100 on the number of participants allowed in a community solar venture. It would prohibit utilities from setting new requirements for installing a second meter at homes that

already receive credit for energy they produce and put back onto the grid.

Green said the override vote is expected sometime in the last week of July.

“We had the votes the first time through — enough votes to override the veto — assuming we hold on to all the lawmakers who voted in favor the first time around,” Green said. “So I feel optimistic. But there certainly remains work to be done in contacting our Maine lawmakers to make sure they remain strong in the face of very strong opposition from the governor.”

The legislation passed 105-41 in the House of Representatives and 29-6 in the Senate, giving supporters a cushion of two votes in the House and six in the Senate to maintain a two-thirds vote required for an override.

On the final day of the 2016 legislative session, however, defections by House Republicans allowed LePage to survive an override vote on his veto of a bill to increase the amount of solar-generated electricity in the state’s renewable energy portfolio.

If You’re not at the Table, You May be on the Menu

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For more information, contact Marge Gold (marge.gold@rtoinsider.com)