FERC Urged to Embrace Carbon Pricing
Chatterjee Sees ‘Action’ Coming

By Michael Kucer, Michael Yoder, Amanda Darish Cook and Rich Heidorn Jr.

FERC Chair Neil Chatterjee said the commission’s technical conference on carbon pricing Wednesday would not be an academic exercise.

Although the commission “is not an environmental regulator,” he said, “our complex energy markets cannot be hermetically sealed from state environmental policies. And it’s evident to anyone who’s watched us over the past several years [that] we’ve grappled with the thorny issues that arise at the intersection of state policies and our markets. We’re at a pivotal point when it comes to these discussions — a point that, I think, will ultimately lead to action in some shape or form.”

FERC heard from 32 industry officials, economists, lawyers, RTO executives and others during the daylong conference, which Chatterjee scheduled in response to a petition by a broad coalition of independent power producers and renewable energy trade groups in April (AD20-14). (See IPPs, Renewable Groups Seek FERC Carbon Pricing Conference.)

Most of the panelists urged the commission to support state and RTO efforts to introduce carbon pricing, although they said a uniform national price regime authorized by Congress would be preferable.

Here are the highlights of what we heard:

‘Crash Warnings’

Sen. Sheldon Whitehouse (D-R.I.) opened the conference with a list of potential bad outcomes if the U.S. and other industrialized nations fail to curb emissions linked to increas-

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NextEra Buying GridLiance for $660M
Blackstone Cashes in its Chips

By Rich Heidorn Jr.

NextEra Energy Transmission (NEET) announced last week that it will pay $660 million to acquire independent transmission company GridLiance, which owns 700 miles of high-voltage lines in Illinois, Kansas, Kentucky, Missouri, Nevada and Oklahoma.

The deal, which includes the assumption of debt, will be financed in part by parent NextEra Energy’s $2 billion sale of equity to BoA Securities and Barclays, announced Sept. 16.

Launched in 2014, GridLiance markets its expertise in planning, engineering, construction and operations to small transmission owners, including electric cooperatives and public power. Backed by Blackstone Energy Partners, an affiliate of The Blackstone Group, it also offers its “partners” a source of capital investment for transmission projects.

GridLiance owns and operates transmission in Illinois, Kansas, Kentucky, Missouri, Nevada and Oklahoma, and has long-term agreements with transmission owners in Missouri, Oklahoma, Nevada, Texas and Kansas. | GridLiance

In addition to the transmission it owns,

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Calif. IOUs Escape Blame for Fires So Far
(p.11)

Overheard at Gulf Coast Power Association Summit
(p.20)

Overheard at NECA 2020 Fuels Conference
(p.24)

Vistra Declares End of Midwest Coal Fleet
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NextEra Buying GridLiance for $660M
Blackstone Cashes in its Chips

GridLiance also has long-term partnership agreements in Missouri, Oklahoma, Nevada, Texas and Kansas.

For Florida-based NextEra, the acquisition will give it a bigger foothold in the Midwest after failing in its 2016 bid for Texas’ Oncor. (See Texas PUC OKs Sempra–Oncor Deal, LP2L Transfer.) NextEra also was rumored in April as a suitor for Kansas’ Evergy. (See NextEra Said to be Eying Every as Acquisition Target.)

NextEra said the deal will require approval from FERC and utility commissions in Kansas, Missouri and Oklahoma. It is expected to close in 2021.

“GridLiance partners with electric cooperatives and public power utilities to enhance transmission system reliability and is well positioned to benefit from the substantial expected renewables growth over the coming years,” NextEra CEO Jim Robo said in a statement.

“This acquisition furthers our goal of creating America’s leading competitive transmission company and is consistent with our strategy of adding high-quality regulated assets to our portfolio.”

“We are very excited to be joining NextEra Energy Transmission at a pivotal time in the company’s development,” GridLiance CEO Calvin Crowder said. “Our unique capabilities, proven track record and tremendous growth prospects, coupled with NextEra’s experience as a leading transmission owner, make this a great fit for both companies. We are also grateful for the support of Blackstone in founding GridLiance and for working closely with management over several years to build the company.”

Fighting ROFR

NextEra currently has operating assets in California, New Hampshire and Texas, including Lone Star Transmission in Central Texas (330 miles of double-circuit 345-kV line and six substations).

One of NEET’s affiliates was awarded the rights to the Empire State Line in Western New York (20 miles of 345-kV line and two substation), which will increase renewable energy flows from the Niagara hydropower facility and imports from Ontario by 3,700 MW. Another affiliate is building the East-West Tie in Ontario (280 miles of double-circuit 230-kV line), which it says is the first competitive transmission project awarded to a nonincumbent in the province.

MISO awarded a NEET subsidiary a contract to build the 500-kV Hartburg-Sabine Junction transmission project — a new 23-mile, single-circuit 500-kV transmission line, four 230-kV transmission lines and a new substation near Beaumont, Texas. But before beginning construction on the nearly $129 million project, the company will have to overturn a Texas law giving incumbent transmission companies the right of first refusal to build new transmission lines. Oral arguments in NextEra’s challenge to the law were heard in the 5th U.S. Circuit Court of Appeals on June 1. (See Appeals Court Sets Dates in Texas ROFR Challenge.)

The Wall Street Journal reported on Sept. 29 that Duke Energy recently rebuffed a takeover attempt by NextEra. NextEra is still interested in Duke, the Journal said, noting that such a deal would be the largest utility acquisition ever. NextEra is the largest public utility in the U.S. with a market capitalization of $139 billion; Duke has a market value of about $61 billion.

NextEra shares closed Sept. 29 at $283.12/share, down $1.02 (0.36%). Blackstone shares rose by 5 cents to $52.71/share (0.095%).

GridLiance was the second asset sale by Blackstone Energy this month. On Sept. 24, it announced it would sell its 42% stake in Cheniere Energy Partners to Brookfield Infrastructure Partners and funds managed by Blackstone Infrastructure Partners for $7 billion. In 2012, Blackstone Energy and its affiliates invested $1.5 billion in Cheniere to build the first two liquefaction trains at the Sabine Pass LNG facility in Louisiana, the first LNG export facility in the continental U.S.
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She ended her opening remarks by chiding FERC for failing to invite any state regulators or more women to the conference; all but five of the 32 panelists were men. “I hope there will be an opportunity to solicit a broader sampling of views for the record and in future conferences and dockets,” she said.

Ari Peskoe, director of the Harvard Electricity Law Initiative, said that “the Supreme Court’s most recent decision [FERC v. EPA] about the scope of the commission’s authority teaches that when the commission does no more than follow the dictates of its regulatory mission to improve the competitiveness, efficiency and reliability of the wholesale market, courts will be reluctant to cut off the commission’s jurisdiction in the absence of a clear statutory bar. Integrating a carbon price can fit well within the commission’s mandate as a market regulator.”

It would exceed the commission’s jurisdiction to use a carbon price in a wholesale tariff to pass judgment on existing state programs favoring clean energy resources, unless a state explicitly chooses for carbon pricing to apply to or supersede specific programs,” Rossi said.

Independent consultant Roy Shanker said that while the commission has authority to approve carbon pricing in RTOs, doing so might be counterproductive absent a nationwide and economy-wide carbon price that eliminates “leakage” concerns.

“Notions presented by parties that try to suggest that such segmented approaches to carbon pricing policy convey a societal benefit by internalizing carbon-related emission costs are simply incorrect,” Shanker said. “The reality is that they may be making things actually worse.”

One Wholesale Market, One Carbon Price
States should strive for agreement on a single carbon price across a wholesale market’s footprint — if not nationwide — experts stressed during the second panel of the day.

Stanford University’s Frank Wolak said a “stable, predictable price of carbon into the distant future” could function like fuel prices in wholesale electricity markets.

“Simply subsidizing green is a much more expensive way to reduce greenhouse gas emissions than taxing brown,” he said.

PJM Independent Market Monitor Joe Bowring said a single carbon price for the RTO could simply become part of the marginal costs of generators, with states controlling the resulting revenues. If multiple states can’t settle on a single carbon price, he said, revenue redistribution mechanisms can be used.

NYISO CEO Rich Dewey said current compliance costs for environmental obligations, including the Regional Greenhouse Gas Ini-
“Continued talk about the benefit of placing a meaningful price on carbon emissions, uncoupled from concrete and immediate action to do so, while simultaneously acting to undermine state-led emission-reduction efforts, serves only to prolong emissions output from fossil generation, force more nuclear into early retirement and put the nation farther away from meeting our decarbonization goals.”

—Exelon CEO
Christopher Crane

Role for Nukes, Gas

In the closing session, Exelon CEO Christopher Crane lamented the increased emissions resulting from the shuttering of money-losing nuclear generators. He said Illinois will see a 70% increase in electric sector emissions if Exelon shuts its Byron and Dresden plants, which are scheduled for retirement in 2021, and the Braidwood and LaSalle plants, which he said are “showing increasing signs of financial distress.”

Crane said Exelon did not fully support the petition seeking a technical conference because it included a sentence saying the petitioners were not asking the commission to institute a rulemaking or direct implementation of carbon pricing.

“Continued talk about the benefit of placing a meaningful price on carbon emissions, uncoupled from concrete and immediate action to do so, while simultaneously acting to undermine state-led emission-reduction efforts, serves...”
only to prolong emissions output from fossil
generation, force more nuclear into early
retirement and put the nation farther away
from meeting our decarbonization goals,"
Crane said. “Discussion at the commission
and RTO/ISO level must evolve into action
that is commensurate with the urgency of
the climate crisis. Until then, states seeking
to preserve and expand emissions-free electricity
have only the second-best tools available. If
the commission is serious about the virtue of
wholesale markets and the efficiencies they
bring, it will insist that those markets be used
to help states achieve their carbon goals, rath-
er than undermine them.”

Calpine CEO Thad Hill and Dena Wiggins,
CEO of the Natural Gas Supply Association,
expressed support of carbon pricing but lob-
bled for a continued role for natural gas-fired
generation, saying it is essential to supple-
menting intermittent resources. “Natural gas
generation is an enabler of economy-wide
decarbonization, not an inhibitor,” Hill said.

Brett Mattison, CEO of American Electric
Power’s Kentucky Power, said FERC must be
cognizant of the economic hardship facing
ratepayers in his company’s service territory.
“In evaluating carbon pricing and other mecha-
nisms designed to incentivize the participa-
tion of renewable resources in organized markets,
it is important to consider the impacts of such
mechanisms on our customers,” he said. “AEP
recognizes and is committed to transformation
to a greener economy; we cannot, however,
overlook issues of cost and reliability as we re-
alize this change. We must promote a diverse
supply mix that can lower emissions while
preserving cost and reliability goals.”

Chris Parker, executive director of the Utah
Department of Commerce, said his state
would “resist any direct, pre-dispatch carbon
price mechanism in RTO/ISO markets because
state policies should not have such a direct
effect on wholesale markets.”

“FERC has no authority to tax resources in
its markets. States have no authority to set a
carbon price that directly changes dispatch
and prices in wholesale electricity markets,” he
continued. “The fact that states’ resource de-
cisions will affect the wholesale markets does
not license direct intervention in dispatch and
pricing outcomes in wholesale markets. This
would leap the boundaries of state authority,
exporting state policies to the entire market.
Federal market regulation does not license
extraterritorial state taxation.

“There’s a lot of fear among states like Utah
that we’re going to end up with other states’
policies rammed down our throat,” he added.
“We’re going to be wary of participating in
those markets.”

Chatterjee Responds

Speaking to reporters via teleconference the
next day, Chairman Chatterjee acknowledged
“there seems to be a basic, foundational
agreement that FERC has the legal authority
to evaluate” a state-imposed carbon price in an
RTO’s or ISO’s tariff. Whether the tariff revi-
sions pass the just-and-reasonable standard of
the FPA would depend on their details, he said.

In his opening remarks Wednesday, Chatter-
jee warned that “some of the proposals that
have been floated — while presumably well
intentioned — could actually bring with them
more harm than good.” When asked what these
proposals were, he alluded to state subsidies.

“I believe in markets and market mechanisms,
and the landmark actions we have taken bear

“There’s a lot of fear among states like Utah that we’re
going to end up with other states’ policies rammed
down our throat,” he added.
“We’re going to be wary of participating in those
markets.”

—Chris Parker, executive director of the
Utah Department of Commerce

that out,” he said, noting Orders 841 and 2222,
which directed RTOs to open their markets
to energy storage and aggregated distributed
energy resources, respectively. “Out-of-market
payments are less efficient toward” decarbon-
ization of the electricity sector, he said.

Chatterjee also said it would not be “appropri-
ate for the commission to act proactively” and
find an RTO’s Tariff unjust and unreasonable
because of its lack of a price on carbon, “absent
a congressional mandate.”

The chairman also was asked about the
potential impact of the presidential and con-
gressional elections on federal carbon policy.
Regardless of the election results, he said, “the
commission is going to have to confront these
issues, as states are going to continue to take it
upon themselves to push for these policies.”

Michael Brooks contributed to this report.
PacifiCorp Faces Class Action over Wildfire Response

By Robert Mulin

Three Northwest law firms last week filed a class action suit against PacifiCorp alleging the utility failed to de-energize power lines that contributed to a set of devastating blazes ignited in Oregon during the Labor Day weekend.

The development highlights the pressures Western utilities increasingly confront as wildfire dangers grow in length and scope, impacting areas previously not prone to the kind of fast-moving conflagrations that have plagued California in recent years.

It also illustrates the tightrope utilities must walk when deciding whether to invoke public safety power shutoffs (PSPS), the policy of pre-emptively shutting down lines to prevent sparking fires in high-risk areas.

The lawsuit, filed with the Multnomah County Circuit Court on Thursday, contends that Portland-based Pacific Power and its parent company PacifiCorp ignored warnings of hot, dry winds coupled with “extremely critical fire conditions” on Sept. 7, leaving lines energized in high-risk fire areas even as other Oregon utilities proactively cut power to avoid igniting trees and brush in the state’s extensive and towering forests.

An unusual wind storm with easterly winds swept the state Labor Day evening, toppling a number of those lines, sparking fires that rapidly swept through the Clackamas, Santiam, McKenzie and Umpqua canyons, as well as other parts of Oregon, the complaint contends.

“Defendants’ energized power lines ignited massive, deadly and destructive fires that raced down the canyons, igniting and destroying homes, businesses and schools,” the complaint says. “These fires burned over hundreds of thousands of acres, destroyed thousands of structures, killed people and upended countless lives.”

As evidence of Pacific Power’s culpability, the lawsuit cites a Northwest Incident Management Team (NIMT) report on Sept. 10 stating that downed lines on Sept. 7 sparked at least 13 fires along a nearly 30-mile stretch of the Santiam Canyon from the town of Detroit west to Mehama. The following day, the ferocious, wind-driven Beachie Creek Fire overran Detroit from the east and ultimately grew to more than 190,000 acres after merging with a separate blaze originally dubbed the Santiam Fire.

The lead plaintiffs in the suit, Jeanyne James and Robin Colbert, lived in the Santiam-area town of Lyons. The couple lost their home, four cars, a garage full of collectibles and tools, and nearly all their personal belongings, according to the suit, which seeks to represent other residents who suffered similar losses.

The complaint cites statements from an NIMT commander, who recounted during an early September press conference that a fire team stationed at the Old Gates School in Gates, east of Lyons, witnessed power lines fall near the school around 9:45 p.m. on Labor Day, sparking a fire that burned down the incident command post. Firefighters and other witnesses saw downed lines ignite fires in other parts of Gates, the complaint notes.

Pacific Power “could have de-energized their power lines during the critical and extremely critical fire conditions, at little to no cost to defendants, and thereby fully eliminate the risk of fire caused by power lines,” the complaint says.

Instead, the utility acknowledged that the Santiam area was not in its PSPS area and only de-energized lines at the request of local emergency agencies, the suit said.

PacifiCorp said it does not comment on pending litigation.

‘No Small Matter’

The filing of the class action Thursday coincided with a special meeting of the Oregon Public Utility Commission on utility responses to the Labor Day wind storm and subsequent fires. Testimony illustrated the complications utilities face when deciding whether to call for
shutoffs in high-risk areas. It also demonstrated the differences between the responses of the state’s two big investor-owned utilities, Pacific Power and Portland General Electric.

Pacific Power CEO Stefan Bird said the utility introduced PSPS in its planning in 2018 “as a last resort in extreme weather conditions in specific high fire-risk areas of our service territory.”

“We understand it’s no small matter to consider turning the power off for an entire community, and that such an action needs to take in consideration the risks that imposes to critical emergency services that rely on power, such as hospitals, 911 communications, water supply and vulnerable customers that rely on power to meet their medical requirements,” Bird told commissioners.

David Lucas, Pacific Power’s vice president of operations, said conditions on the utility’s system “did not meet protocols” for using PSPS in its high fire-risk areas. However, a map on Pacific Power’s website shows the Santiam Canyon is not even located near any of the utility’s PSPS zones.

“Similar to our colleagues at PGE,” Lucas said, “we did de-energize lines at the request of local emergency agencies to allow firefighters to do their job safely and to assist in removing debris to unblock roadways.” He said utility staff took those actions in the Medford area, about 235 miles south of the Santiam Canyon.

“We know public safety power shutoffs are often a focus when the public hears about utility wildfire mitigation; however, this is only one tool in a utility’s toolbox,” Lucas said. “And as we’ve learned through extensive local community engagement, public safety power shutoff events must be properly planned and coordinated so that a loss of power does not have unintended consequences of actually increasing public safety risk.”

Unlike Pacific Power, PGE did pre-emptively de-energize lines on Labor Day in anticipation of the wind storm, shutting power to about 5,000 customers near Mount Hood in what was the first PSPS event to affect Oregon residents. (See High Fire Danger Prompts First Oregon PSPS Event.)

During the PUC call, PGE Vice President Larry Bekkedahl said the utility was under a "heightened level of alert" in the week before the weather event, prompting it to contact customers and community leaders to plan for a potential PSPS, including relocating "medically fragile" residents.

“This was not a decision we took lightly, as we recognized the hardships that the loss of power presents to many customers,” Bekkedahl said. “On [Labor Day] evening, I made the decision to de-energize in the highest-risk section of our service area” near Mount Hood. PGE subsequently de-energized lines in eight other areas, including towns threatened by both the Beavie Creek and Riverside fires, which at one point threatened to merge.

While the lawsuit does not mention PGE’s actions, it does note that the Eugene Water & Electric Board (EWEB), which serves a territory about 70 miles south of the Santiam area, pre-emptively de-energized lines during the storm.

The complaint noted that EWEB spokesman Joe Harwood told The Register-Guard on Sept. 9 that “I know people weren’t happy, but the idea was not to be the cause of a fire.”

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FERC OKs CAISO EV Charging, Storage Updates
Changes Meant to Keep Up with Rapidly Changing Market

By Hudson Sangree

FERC last week approved a CAISO Tariff change to increase demand response participation by businesses offering on-site electric vehicle charging and a second change to improve accounting for the load-shifting capabilities of behind-the-meter storage resources (ER20-2443).

The ISO pays DR resources when they curtail load during times of high demand for electricity and strained supply. But a growing share of DR resources now include on-site load, generating capacity and batteries. In particular, the ISO said, a growing trend is providing EV charging at large energy customer locations, such as grocery stores, theaters and office buildings.

“According to CAISO, EVSE [electric vehicle supply equipment] frequently operates under the same retail meter and account as their host facility,” FERC said. “Thus, the entire facility must participate as a single metered resource even though the EVSE and on-site host load may have very different load profiles. CAISO asserts that, by failing to capture the unique load profile of the EVSE, it may send the wrong price signals to EVSE owners, thereby failing to provide incentives to curtail load during peak conditions.”

CAISO also said storage and DR resources can play important roles in managing peak demand, especially during the evening ramp. The net peak after solar declines was a major source of problems for the ISO during its August and September energy emergencies. (See CAISO Provides More Details on Blackouts.)

The ISO said its current rules “only capture the value of reducing demand compared to typical use” and do not incentivize storage resources to increase demand during oversupply conditions, which it said would help maintain reliability, avoid curtailments and stabilize prices.

To fix those issues, CAISO proposed two tariff modifications.

One would treat EVSE as a separate load curtailment measure when providing DR at facilities with on-site load. “CAISO notes that it will not require such resources to separate their EVSE from the rest of their load, but, where demand response resources elect to measure EVSE performance separately, CAISO states that the resource must submit the EVSE to avoid commodifying the EVSE load and the on-site host load’s performance,” FERC said. “However, CAISO explains that the EVSE and on-site host load will still continue to operate under a single resource ID and will bid and meet CAISO schedules together as a single resource, but [they] will be settled separately based on their individual baselines.”

A second Tariff change creates “a demand response participation model to facilitate load-shifting capabilities of behind-the-meter energy storage resources to better account for when such resources charge or discharge at optimal times.” The change will establish two separate resource IDs: a consumption resource ID to track energy storage charging and a curtailment resource ID to account for the energy storage discharging to increase the site’s load curtailment.

Each resource ID will have its own baseline and DR energy measurement to establish typical use, using methodologies nearly identical to CAISO’s existing metering generator output methodology.

In comments, Southern California Edison supported the changes but worried they could lead to market gaming. CAISO said it was unsuasaded by SCE’s argument.

FERC accepted the revisions effective Oct. 1, saying they would improve DR participation.

“As CAISO explains, EVSE and behind-the-meter energy storage resources are increasing throughout the CAISO footprint at a rapid pace, and the goal of the proposed Tariff revisions is for CAISO’s policies to keep pace with these technological advancements.”

“Allowing CAISO to implement these provisions will provide EVSE and behind-the-meter energy storage resources with access to CAISO’s wholesale markets under just and reasonable rules that will also capture their unique characteristics and benefits,” FERC said.
FERC Approves GIAs, Rejects OG&E Challenge

By Tom Kieckhefer

FERC last week accepted two previously rejected unexecuted generator interconnection agreements between SPP, Oklahoma Gas & Electric (OG&E) and a pair of wind farms (ER20-2544, ER20-2545).

The two wind facilities, Frontier Windpower II and Chillico Wind Farm, were part of SPP’s 2016 definitive interconnection system impact study (DISIS). Staff performed five restudies following the initial DISIS as projects dropped out of the GI queue or interconnection points were re-designated.

The fourth restudy identified Wolf Creek Emporta as a shared network upgrade needed to accommodate the cluster’s interconnection requests. However, the ensuing restudy indicated the upgrade was no longer needed following the Board of Directors’ 2019 approval of the Wolf Creek-Blackberry competitive transmission project.

The latter project is now waiting on FERC approval to proceed. (See “Board Lifts Suspension on Competitive Upgrade,” SPP Board of Directors/MC Briefs: Sept. 22, 2020.)

SPP revised the original GIAs to remove the Emporia upgrade. It said it filed the unexecuted agreements because OG&E disagreed with the proposed cost allocations, which did not allocate any Blackberry project costs to the wind facilities.

FERC rejected the GIA filings in April, saying their cost allocations were unjust and unreasonable because they were based on the Emporia upgrade. In approving the revised GIAs on Sept. 28, it noted they no longer contain the Emporia upgrade and include the Blackberry project as a contingent facility.

The commission reiterated its position that SPP did not violate its Tariff in performing the fifth restudy, pointing out that 13 higher or equal priority queued interconnection customers had dropped out. FERC disagreed with OG&E’s argument that SPP violated the commission’s interconnection-related pricing policy and cost causation principles by proposing not to assign Blackberry’s costs to the DISIS group.

“SPP’s proposed cost allocation for the Blackberry project is consistent with the [Tariffs’] requirements for cost allocation,” the commission said.

FERC last week also responded to OG&E’s request to rehear the April order on Frontier II, which was automatically rejected when the commission did not respond within 30 days. The commission provided additional discussion but came to the same conclusion (ER19-2747).

OG&E had argued that FERC “failed to support with substantial evidence” its finding that SPP was allowed to undertake the fifth restudy when some of the projects were withdrawn. The commission declined to address the complaints.

The utility also contended that FERC erred by agreeing with an earlier mistaken SPP statement that a planning assessment justified the fifth restudy, arguing that the assessment contained improper assumptions that cause it to ignore the Frontier project’s impact. The commission reminded OG&E that it found the fifth restudy was not flawed, and it said the utility failed to provide evidence supporting its allegations that SPP never provided “specific assumptions” including in the planning assessment.

Frontier II, at 350 MW, is the largest wind project in Duke Energy Renewables’ fleet. It will be paired with the 200-MW Frontier I, which has been operational since 2016.
SPP News

Chatterjee, Danly Clash over ‘Regulatory Flexibility’
Commission Grants Montana-Dakota Waiver of SPP Tariff

By Robert Mullin

A seemingly mundane request for a waiver of an SPP Tariff requirement last week prompted a rare philosophical dispute between FERC’s two Republican members (ER20-966).

At issue was a request by Montana-Dakota Utilities for a one-time waiver of a one-year notice requirement for rolling over its network integration transmission service (NITS).

Under SPP’s Tariff, an existing firm transmission customer with a contract of at least five years has the right to continue taking service from a transmission provider when its contract expires, rolls over or is renewed. But the RTO’s rules stipulate that the customer must notify the provider that it is exercising its reservation priority no later than one year before the end of its existing contract.

In May 2016, FERC approved a partial settlement among Montana-Dakota, SPP, the Western Area Power Administration and Basin Electric Power Cooperative that memorialized an agreement among the parties to resolve seams issues related to the integration of WAPA and Basin into the RTO.

One of the issues the partial settlement was intended to resolve was the provision of network customer transmission credits to Montana-Dakota according to section 30.9 of SPP’s Tariff. The settlement also described the terms and conditions of the NITSA agreement (NITSA) signed by Montana-Dakota and SPP. The RTO filed the NITSA on July 27, 2016, retroactively effective Oct. 1, 2015, and to expire five years later.

On Oct. 19, 2019, Montana-Dakota submitted revisions to the NITSA to include additional facilities eligible for the section 30.9 credits. While that revised NITSA was still pending before FERC, the utility was notified by SPP on Jan. 28, 2020, that its original NITSA was set to expire on Sept. 30. Montana-Dakota said it contacted SPP the next day to express its wish to roll over the NITSA. Because the service was set to expire Oct. 1, Montana-Dakota had been required to notify SPP on Oct. 1, 2019, but the utility said SPP had been on notice of the utility’s intent to do so throughout negotiations for the revised NITSA.

Montana-Dakota contended that it met the four criteria laid out by FERC for granting Tariff waivers: that it acted in good faith; that the waiver is limited in scope; that it solves a “concrete problem”; and that it does not harm third parties.

The utility said it incorrectly assumed that the NITSA was effective as long as the partial settlement remained in effect and that it was unaware SPP’s Tariff required it to provide notification of its intent to roll over. It said the waiver would protect it from substantial network upgrade costs that it and its customers would incur in obtaining new NITS.

Both WAPA and Basin said they supported the waiver; SPP said it did not oppose the request.

In a brief finding, Chairman Neil Chatterjee and Democratic Commissioner Richard Glick voted to grant the waiver, agreeing that Montana-Dakota’s request met FERC’s four requirements. “Montana-Dakota’s failure to comply with the current one-year notice requirement appears to have been inadvertent, and Montana-Dakota states that it notified SPP the day after it was informed that it missed the deadline, providing SPP with notice approximately eight months prior to expiration of its NITSA,” they said.

No Authority

More substantial than the order itself was the dissent issued by Commissioner James Danly, along with a concurrence from Chatterjee that firmly faulted Danly’s legal reasoning.

In his dissent, Danly argued that the commission lacks the authority to grant such a request. “Even if we were to put that infirmity aside, Montana-Dakota’s request fails our
four-factor test,” he added.

Danly wove a complicated legal argument that left open the question what latitude — if any — that FERC has in approving waiver requests. He argued that the filed rate doctrine and FERC’s rule against retroactive ratemaking restrict the commission’s ability to grant retroactive waivers. He noted that while those doctrines were developed in cases regarding utility rates, the logic of the doctrines “applies equally” to non-rate tariff cases.

“Because a waiver request is in essence a request that the commission permit a one-time change to a tariff provision, the commission is legally barred by the filed rate doctrine and the rule against retroactive ratemaking from granting a retroactive waiver request unless one of two judicially recognized exceptions applies: (1) the parties had notice that the tariff provision could be waived retroactively; or (2) the tariff provision is embodied in a private contract between the parties, who have agreed in that contract to make the agreed-upon rate effective prior to filing that contract with the commission. Neither of these exceptions apply here,” Danly said.

He said that while the commission “may enjoy some latitude to interpret this precedent,” it must “at least acknowledge that its authority to grant such a waiver is at issue and then identify the source of its legal authority to approve the request.” FERC had failed to meet that standard in the Montana-Dakota docket, he argued.

But even if FERC had the authority to grant the waiver, Danly said Montana-Dakota failed the four-factor test because the utility asserted that the waiver would maintain the status quo through its ability to continue to take NITS to serve its load and maintain the long-term benefits of the partial settlement for the utility and SPP members.

“But the fact that granting the waiver preserves the status quo is exactly why the waiver harms third parties,” Danly argued.

“Preserving the status quo for Montana-Dakota when application of SPP’s tariff would cause it to lose its rollover rights will cause entities that have submitted requests for service to incur substantial network upgrade costs to obtain service to which they would otherwise be entitled absent the waiver, or else be denied service,” Danly said. “The record does not inform us as to the number of requests that would be affected by granting this waiver. Nevertheless, even in the absence of that evidence, we know, based on Montana-Dakota’s own submission, that the request must run afoul of the no-harm-to-third-parties factor.”

Danly said he recognized that denying the request could have “serious consequences” for Montana-Dakota in the form of network upgrade costs passed on to its customers, which “would only have been exacerbated” by FERC’s “inexcusable” eight-month delay in acting on the request, preventing the utility from meeting SPP’s May deadline for participating in the transmission open season.

“Though Montana-Dakota and its customers may be due sympathy, to ignore the consequences of the waiver to other utilities is to take a one-sided view of the equities,” Danly said.

‘Regulatory inflexibility’

“The dissent, at its core, argues for an approach to waiver requests that requires flawless adherence to all administrative tariff deadlines and denies the commission a modicum of regulatory flexibility to address ministerial or inadvertent errors on a case-by-case basis,” Chatterjee countered in his concurrence. “Such an approach ignores the business realities facing public utilities. And it harms consumers. Recent challenges posed by the COVID-19 pandemic have underscored the value of regulatory flexibility when circumstances warrant.”

Chatterjee noted that Danly acknowledged the potential harm to Montana-Dakota customers and said that neither the Federal Power Act nor the filed rate doctrine require such an outcome for an “inadvertently” missed administrative deadline where there is no evidence of harm to third parties.

“The dissent does not sufficiently grapple with the record evidence here that granting the instant waiver not only will avoid harm to customers of Montana-Dakota, but also will avoid harm to specific third parties,” Chatterjee wrote.

The chairman cited WAPA’s comments that failure to grant the waiver could jeopardize the partial settlement, which preventing pancked rates for WAPA’s Upper Great Plains Region, Basin Electric members and other load-serving entities in the Upper Missouri Zone.

Danly shot back regarding Chatterjee’s criticism of the dissent’s “regulatory inflexibility.”

“It is the law that denies us that regulatory flexibility, inadverency and circumstance-specific challenges notwithstanding,” Danly said. “To deny a waiver under circumstances such as these might appear inflexible. But the doctrines that constrain us make no allowance for such considerations.”
Company Briefs

AEP to Switch 100% of Vehicle Fleet to Electric by 2030

American Electric Power last week announced it will accelerate its electric vehicle purchases with the goal of replacing 100% of its 2,300 cars and light-duty trucks with EV alternatives by 2030.

AEP’s total fleet is composed of nearly 8,000 vehicles, including medium- and heavy-duty vehicles. By converting them to electric or hybrid models, the company said it will achieve its goal of electrifying 40% of its entire on-road fleet in less than 10 years.

The company estimates it will avoid using more than 10 million gallons of fuel, amounting to $40 million savings in fuel costs over the life of the vehicles.

More: AEP

Ameren Sets Goal of Net Zero by 2050

Ameren last week pledged to reach net-zero carbon emissions by 2050, with a plan to invest $8 billion in renewable energy and accelerate coal plant closures.

In its 15-year integrated resource plan, Ameren said it plans to invest nearly $8 billion to add 3.1 GW of renewables to its mix by 2030, hitting a total of 5.4 GW by 2040. The move will allow it to reduce carbon emissions by 50% from 2005 levels by 2030 and 85% by 2040.

The timeline for coal plant retirements has also been accelerated for its Sioux Energy Center, which is now expected to close by 2028, and its Rush Island Energy Center, which will shutter by 2039. Ameren already planned to close its Meramec Energy Center by 2022 and two of its four units at the Ladadie Energy Center by 2036. The moves would remove three-quarters of its coal-fired capacity by 2040. All remaining plants are scheduled to retire by 2042.

More: GreenTech Media

Avangrid Renewables Adds to Offshore Wind Leadership Team

Avangrid Renewables last week announced the appointment of Bill White as head of U.S. offshore wind and Sy Oynt as deputy CEO of Vineyard Wind.

White will lead the development and implementation of the company’s overall offshore wind strategy in the U.S., while Oynt will join White’s team and oversee business management, finance, development and delivery for the Vineyard Wind and Park City projects.

Prior to joining Avangrid, White served as president and CEO of EnBW North America. Oynt previously led offshore wind development efforts for the multinational engineering firm Arup.

More: Avangrid Renewables

Robert Murray Files for Black Lung Benefits

Robert Murray, the former president and CEO of the now bankrupt Murray Energy, has filed an application with the U.S. Department of Labor for black lung benefits. Murray and his company often fought against federal mine safety regulations aimed at reducing the disease.

Murray, 80, said that because of his health, he can no longer handle his positions as CEO and chairman of the company’s board.

Murray’s claim is being evaluated to determine the party potentially responsible for paying the benefits. The Labor Department is required to determine a liable party before an initial ruling can be made.

More: West Virginia Public Broadcasting

Exxon Plans for Surging Carbon Emissions

ExxonMobil has been planning to increase annual carbon dioxide emissions by as much as the output of the entire nation of Greece, as the company’s assessment of its $21 billion investment strategy shows yearly emissions rising 17% by 2025.

Planning documents show Exxon has assessed the direct emissions it expects from the seven-year investment plan adopted in 2018. The additional 21 million metric tons of carbon dioxide per year that would result from ramping up production dwarfs projections for its own efforts to reduce pollution.

Internal estimates reflect only a small portion of Exxon’s total contribution to climate change. Greenhouse gases from direct operations typically account for a fifth of the total at a large oil company, as most emissions come from customers burning fuels, for which the Exxon documents don’t account. That means the full climate impact of Exxon’s growth strategy would likely be five times the estimate — or about 100 million tons of additional carbon dioxide — had it accounted for Scope 3 emissions.

More: Bloomberg Green

GM to Achieve 60% Renewable Energy Thanks to Solar Deal

General Motors last week took a step toward its goal of sourcing 100% of its energy from renewables by 2040 with the announcement it had signed a power purchase agreement for a 180-MW solar project to be constructed in Arkansas.

Details such as location, developer and terms of the PPA have not been released, but when the project is completed in 2023, the capacity will lift GM over 60% renewable energy usage and 1 GW of total renewable use.

The power generated by the installation will supply three GM sites in the Midwest; the Wentzville Assembly facility in Missouri, as well as the Lansing Delta Township Assembly and Lansing Grand River Assembly facilities in Michigan.

More: pv magazine

Judge Blocks Peabody, Arch Coal Joint Venture

U.S. District Judge Sarah Pithlyk last week blocked a proposed joint venture between private coal companies Peabody Energy and Arch Resource, saying the Federal Trade Commission “has shown that there is a reasonable probability that the proposed joint venture will substantially impair competition in the market for Southern Powder River Basin coal.”

Peabody and Arch proposed combining the country’s two most productive mines, which border each other near Wright, Wyo., in 2019, and saying the move would “unlock synergies” of $820 million. However, the FTC moved to block the deal in February.

More: St. Louis Post-Dispatch
Octopus Acquires Startup Evolve Energy

U.K. green energy company Octopus last week acquired U.S. startup Evolve Energy as part of a $100 million investment. Octopus Energy US is targeting 25 million U.S. energy accounts on its technology platform by 2027.

Evolve Energy, which was launched in 2018, is a Houston and Silicon Valley-based startup that uses artificial intelligence and machine learning to optimize energy usage and provide customers with the best prices for renewable power.

More: Renew

Ørsted, Eversource Ink Deal to Build Compliant Ships

Ørsted last week announced a deal with Eversource Energy and marine transportation company Edison Chouest Offshore to build what is considered the offshore wind industry’s first ship compliant with the Jones Act.

The Jones Act is a federal law that requires goods shipped between U.S. ports to be transported on ships that are built in the U.S., owned by U.S. companies and operated by U.S. citizens. The offshore wind industry needs special ships to construct and maintain infrastructure. Because the U.S. is just beginning its offshore wind sector, companies building the first projects are using ships and equipment from Europe and have had to shuffle employees and equipment to comply with the act. Making compliant ships is considered an essential step in growing the industry in the U.S.

More: Axios

STEC to Retire 22 MW of Gas Generation

The South Texas Electric Cooperative last week notified ERCOT it intends to retire a pair of gas turbines at its Sam Rayburn facility near Victoria, Texas, because of economic reasons.

The cooperative told the grid operator on Oct. 1 that it intends to decommission and permanently retire the units next February. Each of the units has 11 MW of capacity and was energized in 1963.

Federal Briefs

Duke Energy Plans Largest Floating PV Project

Duke Energy last week said it will build its first floating solar array at U.S. Army base Fort Bragg in North Carolina. It is the largest such project ever announced in the Southeast, according to Wood Mackenzie.

The $36 million contract between Duke and Fort Bragg includes lighting and water upgrades, plus a 2 MW storage system tacked onto a 1.1 MW solar project. Ameresco will build the array on a lake at the base, while Fort Bragg will take over ownership when construction is finished.

The average size of floating PV installations in the U.S. is 1.5 MW, according to WoodMac data. The country’s largest project, a 4.4 MW installation in New Jersey, went live last year. The country has thus far installed about 9 MW of floating installations, making Fort Bragg’s project “quite substantial,” WoodMac solar analyst Molly Cox said.

More: GreenTech Media

EPA Finalizes Weaker Emissions Standards

EPA last week finalized a rule that could reclassify many “major” sources of pollution as minor ones, allowing facilities to abide by less stringent emissions standards for substances such as mercury, lead and arsenic.

The rule will allow major sources to become reclassified if they meet the hazardous air pollutants guidelines in place for the smaller “area” polluters — producing 10 tons per year or less of a single toxin, or 25 tons/year for facilities that emit multiple toxins. The agency estimated the changes will result in up to 1.258 tons/year of additional emissions of hazardous pollutants.

EPA first estimated about 3,900 emitters could be reclassified and subjected to weaker standards than before, but it later added that there are a total of 7,183 facilities currently subject to the major source standards.

More: The Hill

House Passes Bills to Protect Energy Sector Against Cyberattacks

The House of Representatives last week unanimously passed four bills aimed at securing the grid and other energy infrastructure against cyberattacks.

The Cyber Sense Act would require the secretary of energy to establish a program to test the cybersecurity of products intended to be used in the bulk power system. The Enhancing Grid Security Through Public-Private Partnerships Act would require the Department of Energy to establish a program to enhance the cyber and physical security of electric utilities, along with issuing a report on ways to enhance security to address threats.

The Energy Emergency Leadership Act would enhance leadership at DOE on cybersecurity missions to protect the nation’s energy infrastructure. Finally, the Grid Security Research and Development Act would strengthen the ability of the sector to respond to cyber and physical threats, such as wildfires.

More: The Hill

Interior Secretary to Lead BLM

Interior Secretary David Bernhardt will take over as director of the Bureau of Land Management after acting Director William Perry Pendley was removed from the position by a federal judge last week, according to an employee email.

Judge Brian Morris last week ruled that Pendley served unlawfully, as the department and the White House improperly relied on temporary orders far beyond the 210 days allotted in the Federal Vacancies Reform Act.

More: The Hill

Trump Reins in Carolinas Offshore Wind Progress

President Trump’s recent executive order to extend a moratorium on offshore drilling in the Carolinas will also halt offshore wind development in the area.
The Interior Department’s Bureau of Ocean Energy Management confirmed the ban will apply to offshore wind as well as oil and gas. The ban will come into effect on July 1, 2022, and last 10 years.

Existing developments should not be affected by the ruling. However, future lease sales will be halted.

More: Renew

WIPP Received Nuclear Waste Shipments from California

The Waste Isolation Pilot Plant (WIPP) near Carlsbad, N.M., resumed receiving nuclear waste shipments from the Lawrence Livermore National Laboratory (LLNL) near San Francisco this month after a 10-year hiatus. The waste will be permanently disposed of in an underground repository about 2,000 feet underground.

LLNL is primarily a research laboratory that generates transuranic waste during research and engineering operations related to nuclear weapons, plutonium and other technological aspects.

A new release said the resumption of shipments was a result of a multiyear project and collaboration between the Department of Energy’s Carlsbad Field Office, WIPP contractor Nuclear Waste Partnership, the National Nuclear Security Administration and its Livermore Field Office.

More: Carlsbad Current-Argus

State Briefs

REGIONAL

NARUC Appoints Commissioners to Board of Directors

National Association of Regulatory Utility Commissioners President Brandon Presley last week announced the appointment of three commissioners to the association’s board of directors. Maida Coleman (Missouri), Lillian Mateo-Santos (Puerto Rico) and Crystal Rhoades (Nebraska) will fill vacancies of state regulators whose terms have expired.

Coleman joined the Missouri Public Service Commission in 2015 and chaired NARUC’s Committee on Consumers and the Public Interest. Mateo-Santos, who serves as the second vice president of the Southeastern Association of Regulatory Utility Commissioners, joined the Puerto Rico Energy Board in 2018. Rhoades was elected to the Nebraska Public Service Commission in 2014 and represents NARUC on the Federal Communications Commission’s North American Numbering Council.

More: NARUC

ARIZONA

APS Authorizes Energy Efficiency Assistance

Arizona Public Service last week implemented a $51.9 million energy efficiency package that offers programs to help families and small businesses navigate the COVID-19 pandemic.

The plan allows for $9,000 per household for limited income weatherization, a 500% increase to an HVAC unit replacement incentive, a $50 incentive for joining the APS Cool Rewards demand response program and incentives for smart thermostats, connected cool pumps and smart water heaters.

More: Daily Energy Insider

CALIFORNIA

El Dorado County to Start Process of Moving from PG&E

The El Dorado County Board of Supervisors last week started the formal process of joining a community choice aggregation program with Pioneer Community Energy and leaving Pacific Gas and Electric by voting to gather data and information on the process.

The nonprofit governmental program would buy energy from PG&E that would still be transmitted through PG&E-owned lines, which means shutoffs could still happen. However, Vice Chair John Hidahl said aside from cost savings, there is potential for more local control if any changes are made at the state level when it comes to PG&E’s infrastructure.

Hidahl said the county hopes to have the process finished by the end of the year. Customers are free to stay with PG&E if they want.

More: KOVR

PG&E PSPS Leaves Tens of Thousands Without Power

About 87,500 Pacific Gas and Electric customers in 16 counties were without power on Sept. 27 and 28 after the utility preemptively shut it off in areas where wildfires were burning or could possibly start.

The scope of the PSPS included customers in Alpine, Amador, Butte, Calaveras, El Dorado, Kern, Lake, Napa, Nevada, Placer, Plumas, Shasta, Sierra, Sonoma, Tehama and Yuba counties.

Essentially all customers’ power was restored on the night of Sept. 28, the company said. Once the weather “all clear” was given, PG&E crews began inspecting more than 3,900 miles of transmission and distribution lines. Preliminary data showed 13 instances of weather-related damage and hazards in the affected areas, including downed lines and vegetation on lines.

More: Los Angeles Times; PG&E

Wheeler Challenges Effort to Mandate Zero-emission Vehicles

EPA Administrator Andrew Wheeler last week questioned Gov. Gavin Newsom’s plan to require all new passenger vehicle sales in 2035 be zero-emission models and said the plan “raises serious questions regarding its legality and practicality.”

Wheeler said the move could cause problems for the state’s grid and used the recent rolling blackouts as evidence that it could not support the adoption. He also said the move may be subject to federal approval.

(See Calif. to Halt Gas-powered Auto Sales by 2035.)

More: Reuters
COLORADO
Greenhouse Gas Reduction Plan Calls for More EVs
Gov. Jared Polis last week released a draft plan to drastically cut greenhouse gas pollution by accelerating the move to electric vehicles and buses, reducing methane emissions from the oil and gas industry and decreasing emissions from electricity generation by at least 80%.

The plan aims to cut greenhouse gas emissions by more than 25% of 2005 levels in the next five years and 50% by 2030. It also aims for “close to 100%” of vehicles to be electric by 2050.

A public listening session will be held on Oct. 20 with the draft being open for public comment through Nov. 1. It is expected to be finalized and published by the end of the year.

More: The Denver Post

CONNECTICUT
Lamont Signs Energy Bills
Gov. Ned Lamont last week signed three energy-related bills during a special session of the House of Representatives and Senate.

One bill will give consumers credits on their electric bills, plus $250 in reimbursements for lost food and medicine, in the event of future power outages longer than 96 hours. Another bill amended the environmental justice law, which sets requirements for public disclosure, notice and participation in communities that have been adversely affected by facilities such as power plants and trash-to-energy plants.

Another bill added new regulations for cleaning up historic, contaminated industrial sites to make them easier to redevelop. It also requires those who create spills of a variety of wastes, including oil, petroleum and chemicals, to report and remediate them.

More: Stamford Advocate

MICHIGAN
Former Mine Sites to be Repurposed for Solar Operations
Circo Power of Royal Oak last week was awarded a five-year land lease agreement with the Department of Natural Resources to develop large-scale solar arrays at two former mine sites, which will be developed through its affiliate, Copper Country Power I.

The two sites to be developed include the Groveland Mine in Dickinson County, a former 347-acre iron mine, and the 7 Mile Pit in Crawford County, a 169-acre property previously used for sand and gravel mining. A development timeline has not been established because both sites have been left in a degraded condition.

More: MLive

NEW JERSEY
PSEG Applies to Keep Annual Subsidies for Nukes
The Public Service Enterprise Group last week filed an application with the Board of Public Utilities to retain $300 million in ratepayer subsidies annually to keep its fleet of nuclear plants in South Jersey operating.

PSEG initially won the subsidies in 2018, allowing it to avoid closing the three nuclear units on Artificial Island. Without new financial incentives, CEO Ralph Izzo threatened closing the plants, which supply roughly 90% of the carbon-free electricity used by customers. In seeking three more years of subsidies, company officials argued the need for the financial incentives is greater than ever.

Unlike in 2018, the BPU has leeway to reduce the requested subsidies. Then, incentive legislation stipulated the board could only approve $300 million in subsidies, or deny them, and not approve lesser subsidies. The proceeding is likely to be decided next spring.

More: NJ Spotlight

OHIO
Judge Declines AG’s Request for Injunction in HB 6 Civil Case
Franklin County Judge Christopher Brown last week declined Attorney General Dave Yost’s request to stop FirstEnergy, former House Speaker Larry Householder and other defendants accused in a bribery scheme from donating money to political campaigns.

FirstEnergy said Yost’s civil case is without “legal merit,” as the company is not yet facing charges in the case.

Yost says there is still a possibility of filing another injunction to stop new charges set to appear on electric bills in January if HB 6 is not repealed.

More: WOSU

VIRGINIA
Shenandoah County Backs Solar Facility
The Shenandoah County Planning Commission last week unanimously approved a proposed large-scale solar facility in Mount Jackson.

Commissioners recommended the approval of a special-use permit filed by Randolf Solar Partners, which plans to construct a 3.19-MW solar facility on a 32-acre portion of property.

The project, which is expected to become operational in mid-2021, still needs final approval from the Board of Supervisors on Oct. 13.

More: The Northern Virginia Daily
WEST VIRGINIA

Dominion Energy Files Base Rate Adjustment with PSC

Dominion Energy West Virginia last week filed a request with the Public Service Commission to increase its base rates for natural gas service.

If approved, the monthly bill for a typical residential customer would increase by $8.58. The $12.17 gross monthly bill increase reflected in the filing is because of the partial offset and simultaneous change in the pipeline replacement and expansion program rate case, the other main component of customers’ monthly bills.

The new base rates would be effective in July 2021.

More: WBOY

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