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FERC Transmission Update: Day 2 Market Steams Ahead

The new energy markets tariff (TEMT) proposed by the Midwest Independent System Operator (MISO) is on track for an April 1, 2005 start-up. The TEMT had been scheduled for implementation on March 1, 2005, but prospective TEMT participants sought and received additional time for testing and training.

MISO's TEMT represents a fundamental change in the pricing and structure of transmission service in a large portion of the Midwest region, including the territory of Wisconsin's independently owned transmission operator, the American Transmission Company LLC (ATCLLC). The new markets, which include a "Day-Ahead" and a "Real-Time" market, are designed to manage congestion through a bid-based pricing structure, in which the price of energy is determined by the incremental cost of meeting system demand at various intervals throughout the day. Financial instruments are allocated to allow customers to hedge some or all of their congestion costs during high-traffic periods when the costs of transporting energy are high.

The proposed TEMT was challenged by numerous stakeholders since the Federal Energy Regulatory Commission (FERC) issued its initial authorization order in August, 2004. The stakeholders—including diverse coalitions of public and private power systems throughout the MISO region—raised concerns regarding MISO's ability to implement the new tariff, the fairness of its proposed bid-based pricing mechanism, the ability of market monitors to protect against monopolistic behavior, and numerous other administrative and technical issues. Appeals have also been filed on FERC's treatment of the so-called "grandfathered" agreements which predated the implementation of FERC's open access transmission orders in 1998.

In a series of orders issued in December and January, FERC has kept the TEMT on track, finding that MISO has complied with most of the key requirements that have been imposed by FERC. However, before the TEMT can be launched, FERC must issue a certificate of readiness. MISO is scheduled to file its readiness certificate request in mid-February.

Ferc Transmission Update: Day 2 Market Steams Ahead

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A group of Wisconsin stakeholders led by the Public Service Commission continues to monitor MISO activities and participate in committee and work group meetings with MISO and other regional stakeholders to minimize the adverse impacts of market start-up. Despite FERC's approval of several key safeguard mechanisms, including an initial period in which providers will be limited to cost-based bids for energy introduced into the market, most stakeholders anticipate a rough transition to the new market regime. Stakeholders have also raised concerns about MISO's readiness from a technical and administrative standpoint. Nonetheless, most prospective transmission customers continue to gear up for the anticipated April 1st start-up.

Order on Regional Through and Out Rates

In November, 2004, FERC also issued a much-anticipated order on so-called regional "through and out rates." These are the "pancaked" charges imposed on transmission service in and between the two adjoining regional transmission operators, MISO and PJM. PJM now includes territory encompassing much of Illinois (Commonwealth Edison), Ohio, Pennsylvania, New Jersey and Maryland.

In its November order, FERC affirmed the elimination of pancaked rates beginning December 1, 2004 and then analyzed two competing long-term transmission pricing proposals for service within the combined region submitted by regional transmission owners. The Order conditionally accepted the so-called "Unified Plan," which had been proposed by a broad coalition that included most of the MISO transmission owners, including ATCLLC. The plan keeps intact existing "license plate" rates—which allocate the cost of transmission facilities to load located within a specific pricing region—for an initial fixed period ending January 31, 2008 and requires parties to continue working on a long-term pricing solution for interregional service, including a mechanism for allocating the cost of new transmission facilities designed to serve the combined region. However, FERC rejected a key part of the Unified Plan which consisted of an

offer of settlement designed to ease transition to a non-pancaked rate regime. Instead, FERC imposed a highly controversial "Seams Elimination Cost Adjustment" (SECA) for a two-year period ending May 1, 2006. The SECA is intended to compensate transmission owners for the loss of revenues derived from pancaked rates by imposing a charge on transmission customers who receive service from outside their region.

The FERC Order has been challenged by supporters of both competing long-term pricing plans. In the meantime, MISO and PJM transmission owners have submitted compliance filings to enable them to recover SECAs. The SECA filings have also been subjected to numerous protests.

—Richard A. Heinemann

Court Upholds Arrowhead-Weston Power Line Approval

Dane County Circuit Judge C. William Foust has upheld the decision of the Public Service Commission of Wisconsin to approve the \$420 million Arrowhead to Weston high-voltage transmission line, the largest transmission line project in this state in over 30 years. In so ruling, the Court rejected challenges to the project from Clean Wisconsin and Save Our Unique Lands. The challengers, nonetheless, are hopeful to halt the project on appeal.

Judge Foust's decision came just two months after another Dane Court Circuit Judge, David Flanagan, ruled that the Commission failed to follow state law in approving a \$2.15 billion coal plant project proposed by Wisconsin Energy Corporation at the company's existing Oak Creek power plant site. Some in the industry feared that Judge Foust might issue a similar ruling in the transmission line case.

The project still needs additional federal approvals before it can go forward. Clean Wisconsin and Save Our Unique Lands have also petitioned the circuit court for review of a Department of Natural Resources' decision to grant a state wetland permit for the project.

—Anita T. Gallucci

Madison's Minimum Wage Ordinance In Full Swing

Madison's Minimum Wage Ordinance went into effect for employees within the City of Madison beginning January 1, 2005. The Ordinance covers most workers within the City of Madison including indentured apprentices, and other employees, whether paid on time, piece rate, commission, or other basis for each hour of work performed. For employees whose place of employment is outside Madison's city limits but who work a minimum of at least two hours per week in the City of Madison, the minimum wage requirement applies to all hours worked within the city limits.

The Minimum Wage Ordinance does not apply to elected political officers or their personal staff. Also excepted are those in house to house sales or delivery of newspapers, real estate agents, volunteers, and certain employees who work limited intermittent hours such as babysitters and lawn care employees.

The minimum wage for regular employees effective January 1, 2005 is \$5.70, \$6.50 per hour as of January 1, 2006, and \$7.25 per hour as of January 1, 2007. The effective minimum wage rate for January 1, 2008 is \$7.75 per hour plus an inflation adjustment. Beginning January 1, 2005, if an employer fails to pay the employee the legal minimum wage in the City of Madison, the employee may file a complaint with the City of Madison Equal Opportunities Commission.

Shortly before the Ordinance's effective date, a coalition of employer and business groups filed a lawsuit seeking a temporary injunction to block the minimum wage increase. The coalition argued that the City of Madison does not have authority to set a minimum wage independent of the State's minimum wage. Judge Maryann Sumi concluded that Madison can continue to impose its minimum wage while the lawsuit proceeds against the City.

Due to what is considered by many to be a delayed response by the state legislature and governor to raise the state's minimum wage, several municipalities have considered enacting local minimum wage ordinances.

— Jennifer S. Mirus

SPEAKERS' FORUM

March 31, 2005

Legal and Legislative Update

Blackhawk Human Resource Association, Janesville, WI

Robert E. Gregg

April 4, 2005

How to Write Your Employee Handbook

UW Small Business Development Center, Madison, WI

Robert E. Gregg

April 7, 2005

Manager's Duty of Care for the Respectful Workplace

Rock County Job Center, Janesville, WI

Robert E. Gregg

April 7 & 8, 2005

Practical Guide to Zoning and Land Use Law in Wisconsin

National Business Institute, Milwaukee & Madison, WI

Matthew D. Weber

April 11-12, 2005

EEO Law Course

American Association for Affirmative Action National Conference
St. Louis, Missouri

Robert E. Gregg

April 12, 2005

Hair-Raising Employment Tales by the Bald Guy

American Association for Affirmative Action National Conference
St. Louis, Missouri

Robert E. Gregg

April 13, 2005

Are You in the Cross-Hairs for Personal Liability?

American Association for Affirmative Action National Conf.
St. Louis, Missouri

Robert E. Gregg

April 19 & 26, 2005

401(k)

EBIA, Cleveland & Chicago

Cynthia A. VanBogaert

April 29, 2005

Ten Current Hot Issues in Land Use

Annual Town Law Institute, Madison, WI

Richard A. Lehmann

April 29 & May 13, 2005

COBRA

EBIA, Chicago & Minneapolis

Cynthia A. VanBogaert

May 17, 2005

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EBIA, Boston

Cynthia A. VanBogaert

MUNICIPAL LAW NEWSLETTER

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If you have a particular topic you would like to see covered, or if you have a question on any article in this newsletter, feel free to contact any of the Boardman attorneys listed below who are contributing to this newsletter.

Please feel free to pass this Newsletter to others in your municipality or make copies for internal use. If you would like to be added to or removed from our mailing list, or to report an incorrect address or address change, please contact Charlene Beals at 608-283-1723 or by e-mail at cbeals@boardmanlawfirm.com.

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