

Electric Power Daily

Monday, November 22, 2010

US Chamber of Commerce slams EPA on coal ash rules

The US Chamber of Commerce on Friday charged that the Environmental Protection Agency is “overstepping its bounds” as EPA considers whether to regulate coal combustion waste as a hazardous material.

The Chamber of Commerce was just one entity among hundreds of associations, corporations, and individuals commenting on EPA’s coal ash rules in a comment period that ended Friday. The agency held public hearings around the country that pitted environmentalists and concerned individuals against corporate interests worried about the economic effects of coal ash regulation.

Coal ash is recycled and used in cement, concrete, wallboard, roofing materials, paints and plastics, highway projects — so-called beneficial use that would be hindered or eliminated by the substance being slapped with any kind of “hazardous” tag, the Chamber of Commerce said.

“This rule has potentially devastating consequences for America’s construction
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Wind increasingly having effect on MISO power prices

Although generation from wind resources represents only 6% of capacity resources in the Midwest, its impact on power prices has been increasingly felt, forcing market participants to devise new ways to accommodate the renewable energy’s growing stake in the US generation fuel mix.

The Midwest Independent Transmission System Operator has about 9,000 MW of installed wind capacity, up from 7,600 MW as of January 2007, according to MISO’s recently published winter assessment. Another 51,500 MW of wind sit in the interconnection queue, according to MISO. Of that, 21,000 MW is nameplate capacity that has “demonstrated some level of readiness,” said Eric Laverty, MISO director of transmission.

Wind output averaged nearly 1.9 GW in the third quarter, according to the third-quarter market report by MISO’s independent market monitor, Potomac Economics. This represents a year-over-year increase of 71% from 2009 and nearly
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N.M. transmission entity sells \$50 mil in bonds for upgrades

The New Mexico Renewable Energy Transmission Authority last week sold \$50 million in bonds to support transmission upgrades for a power line used by a 100-MW wind farm owned by Edison Mission Group.

The bond sale is a first for RETA and just the second by a state transmission authority, according to Jeremy Turner, RETA executive director.

The bonds will help finance the upgrade of a 70-mile, 115-kV transmission line that Edison Mission uses to transfer power from its High Lonesome Mesa wind project near Willard, New Mexico, to Arizona Public Service, which buys power from the wind farm. Edison Mission’s wind project also issued about \$25.3 million in bonds for the upgrade, which has largely been completed, Turner said.

The seven-year bonds have a 6.85% interest rate, according to Maria Rigatti, Edison Mission treasurer. George K. Baum and Co. was the underwriter for the bond sales.

The possibility of issuing bonds for the High Lonesome Mesa project was first

Missouri governor on board for bill to revive nuclear plant

Missouri Governor Jay Nixon and a group of Missouri utilities have agreed on the framework for a bill that would revive plans for a new nuclear power plant in the state.

Nixon, a Democrat, said Friday that he will work with Missouri lawmakers and utilities to pursue legislation that will allow them to recover the costs of obtaining an early site permit for the project to be built next to the existing 1,190-MW Callaway nuclear power plant near Fulton, Missouri.

Under the proposed regulatory framework, utilities could recover the costs related to seeking a site permit, as long as the expenses are deemed prudent by the Missouri Public Service Commission. The framework maintains Missouri’s ban on construction work in progress, which doomed previous plans to add more nuclear capacity in the state.

“Any decisions down the road regarding how to deal with construction costs will be looked at in the context of determining what power generation option is best for Missouri
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China dismisses allegations in renewables trade dispute

The government of China says it does not provide any trade-distorting prohibited subsidies to its renewable energy industries, does not discriminate against foreign companies and goods, and does not impose technology transfer requirements on foreign parties to joint ventures in the renewable energy sector in China.

In a recent 300-page filing with the US Trade Representative, which is investigating a complaint filed in September by the United Steelworkers union accusing China of unfair trade and investment practices in green energy, China’s Ministry of Commerce urged the USTR “to dismiss the petitioner’s false allegations and keep the global trade relating to this human endeavor on an open and healthy track.”

The Pittsburgh, Pennsylvania-based USW’s complaint alleged that China engages in “trade-distorting domestic subsidies” given to producers of solar, wind, biomass, geothermal, hydropower, nuclear, advanced battery,
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discussed in 2008. RETA's board of directors approved the issuance late last year and the authority began marketing the bonds in February. The process hit a snag in April when Cargill Power Marketing asked the Federal Energy Regulatory Commission to invalidate a transmission agreement between the wind farm and PNM Resources. In July, FERC let the High Lonesome Mesa transmission agreement stand, clearing the way for the bond sale.

The bond issuance was also challenged by the fact that the High Lonesome Mesa wind farm uses turbines built by Clipper Windpower, according to Turner. There were questions about the company's solvency and warranties until United Technologies Corp. agreed to buy the turbine manufacturer, he said. Earlier this year, UTC took a 49.9% stake in Clipper Windpower, and late last month agreed to buy the rest of the company.

RETA hopes the High Lonesome Mesa bond issuance is just the start. "Our name is out in the market," Turner said. "As time goes by, some of the smaller [developers] will see an opportunity to come to RETA, and we can make a significant difference for people."

The Wyoming Infrastructure Authority is the only other state authority to issue bonds to support a power line project. In 2005, WIA issued \$34.5 million in bonds to help finance a 130-mile, 230-kV transmission line built by Basin Electric Power Cooperative in northeastern Wyoming.

RETA was created in 2007 by the New Mexico Legislature to help develop and possibly finance power lines to export renewable energy to markets in states like Arizona and California. At least 30% of capacity on RETA-related lines must be devoted to renewable energy.

In addition to the bond sale, a major step for RETA, the transmission authority has an agreement in place to support the 500-kV to 600-kV Clean Line Energy Centennial West line, called the Centennial West Clean Line, possibly by using its eminent domain authority if needed, Turner said. The 800-mile line would carry about 3,500 MW from eastern New Mexico to

southern Nevada.

RETA is putting the finishing touches on a similar agreement on the 500-kV Lucky Corridor project, which would run about 130 miles across northern New Mexico to the Four Corners hub and would target wind and natural gas-fired resources.

Besides working with transmission developers on individual efforts, RETA has been developing a set of transmission corridors in the state. The corridors are designed to highlight the best areas for transmission development in New Mexico, but do not come with any special regulatory treatment, Turner said.

Turner has been in discussions about transmission issues with the transition team for governor-elect Susana Martinez, a Republican who will replace Governor Bill Richardson, a Democrat who backed the creation of RETA.

In addition, RETA will seek legislation in the upcoming state legislative session. Among other things, RETA would like the Legislature to clarify its ability to keep information from developers confidential, Turner said. — *Ethan Howland*

CFTC approves four proposed rules on swaps

The Commodity Futures Trading Commission on Friday approved four proposed rules and asked for comments on another, as it develops the broad new regulatory regime mandated by the financial reform bill Congress passed last summer.

The proposals include potential rules on how customer funds for certain swap deals are housed, how quickly swaps need to be reported and new swap recordkeeping, reporting and registration requirements.

The rules, which will be subject to a public comment period and another CFTC vote, are among the dozens the CFTC needs to approve to set up the over-the-counter derivatives regulatory regime required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The commissioners, by a 3-2 vote, approved a proposed rule that would require details of a swap transaction to be reported

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as quickly as possible. Republican Commissioners Scott O'Malia and Jill Sommers voted against the proposal, largely due to their view that the reporting rule may dry up market liquidity.

The rule would require each party in the swap deal, whose identities would not be publicly released, to report data on the deal "as soon as technologically practicable," but the CFTC does not plan to quantify when such reporting will take place.

O'Malia said this requirement may be too vague and "does not provide the marketplace any further clarity."

"I believe we owe the market some certainty as to what the commission believes is 'technologically practicable,' " O'Malia said. "If the commission doesn't know, then we should admit as much and attempt to identify an outer time-reporting boundary to provide a clear safe harbor for the market to conduct its business."

Under the rule, the CFTC would allow for a delay of no more than 15 minutes for the reporting of block trades and large notional swap transactions. The rule, which includes a set of tests for determining what is a block trade, would also give swap data repositories discretion to determine the minimum size of a block trade.

The CFTC is also seeking comments on what the time delay should be for a customized block trade, including transactions in the oil, electricity and natural gas markets, CFTC Chairman Gary Gensler said. There is currently a five-minute delay for reporting blocks in the futures marketplace, he said.

Furthermore, swap transactions with a notional value of more than \$250 million will be reported as simply being greater than \$250 million, which "will protect anonymity and promote the liquidity of these large trades," Gensler said. He called real-time post-trade reporting for swaps "an essential ingredient of well-functioning markets. ... "Such transparency increases liquidity and enhances the price discovery function of the market."

Gensler said he expects Wall Street interests will argue that the new reporting rule would harm market liquidity.

Tom Leahy with the CFTC's Division of Market Oversight said no review has been done on the rule's impact on liquidity since the swap market has never been regulated. "There is no laboratory," he said.

The commissioners Friday also unanimously approved two proposals dealing with collateral in swap transactions. Under the first, the CFTC will seek input over the next 45 days on costs and benefits of four different models for the housing of collateral from swaps customers for cleared swaps, in order to protect customers from commodity broker bankruptcies.

These four models include: keeping collateral for each customer in an individual account; commingling collateral, but treating it on an individual basis; using collateral to cover a potential default from non-defaulting members if certain conditions are met; and keeping funds in an omnibus account, which is the model currently being used in the futures market.

Gensler said that since the CFTC began considering the segregation of funds issue, pension funds and asset managers have

largely supported individual accounts for these funds, while futures commission merchants and clearinghouses have mostly preferred omnibus accounts.

Ananda Radhakrishnan, director of the CFTC's Division of Clearing and Intermediary Oversight, said it would likely make the most sense to align the new swaps model with the one used in the futures market.

Kim Taylor with CME Clearinghouse has said that moving to individual accounts from the current omnibus account model used for futures could increase margin costs 50% to 100%.

Under the second proposal, swap dealers and major swap participants would be required to notify their counterparties in uncleared swap transactions that they have the right to have initial margin to be segregated at an independent custodian.

Another rule, approved by 4-1 vote, would set up registration and regulation of swap data repositories and devise a series of responsibilities the repositories would have to meet — such as data acceptance and recordkeeping — and lays out a number of principles by which the repositories would be governed, including antitrust rules and conflicts of interest. Sommers voted against the rule.

Commissioners also unanimously approved a proposed rule to set recordkeeping and reporting requirements for swap deals. Records of these swaps would need to be kept throughout the existence of a swap and for five years after it is terminated or expires.

Since President Obama signed Dodd-Frank into law on July 21, the CFTC has proposed 22 rules and published four advanced notices of proposed rulemaking, Gensler said. The agency is planning to have at least three more public meetings next month. — *Brian Scheid*

Kansas latest venue for wind, military debate

A Kansas legislative panel today will hear a presentation on what remains a challenging issue for wind farm developers in much of the country: the potential conflict between wind farms and military bases.

The Kansas Legislature's Joint Committee on Kansas Security will hear a presentation by Stanley Rasmussen, general counsel for the US Army Central Regional Environmental Office in Lawrence, Kansas, on "the impact of wind power development on military installations, training and readiness," said Jill Shelley, principal analyst at the Kansas Legislative Research Department. Rasmussen did not return telephone calls seeking comment.

Kansas has some of the nation's best wind resources, is expected to become the site of several new wind farms over the next decade, and has several military bases, including McConnell Air Force Base and the US Army's Fort Riley.

The biggest concern raised by some military leaders about wind farms is that wind turbines and their operation can interfere with radar systems — particularly older ones — by creating false patterns on radar than can make groupings of turbine

“read” like a storm. In some areas, the very tall turbines could pose a threat to military flyers on low-flying training missions.

The issue came to the fore last spring, when the Department of Defense came out against Caithness Energy’s planned 845-MW wind farm in central Oregon, which will be the largest land-based wind farm in the US. DOD told the Federal Aviation Administration that operation of the proposed wind farm would scramble radar signals at a nearby Air Force facility and “will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.”

In protest, Oregon’s two US senators, Ron Wyden and Jeff Merkley, placed “holds” on three nominees for Pentagon posts, and after intense lobbying, DOD dropped its opposition and the wind project was allowed to proceed.

DOD also has raised concerns about proposed wind farms in California’s Mojave Desert, leading some projects to be delayed or put on hold.

Wind farm developers and advocates say that they have learned from experience that virtually all potential conflicts between wind farms and military bases can be addressed if developers approach the leaders of nearby bases early in the development process to inform them of their plans.

“It’s a big issue, but I’m not aware of any wind project that’s been stopped” in Kansas, Oklahoma, Texas and nearby areas when the developer has made early contact with base leaders “and asked for their assessment and opinion,” said Paul Sadler, executive director of The Wind Coalition, an Austin-based wind advocacy group active in that region.

Sadler said that a base leader typically is most interested in the proposed location of the wind farm “so they can have a clear understanding of what radar issues that might raise. They also are concerned that the wind farm is not so close that [the tall towers] would not interfere with take-offs and landings.”

At a Texas legislative hearing this past April, leaders from Dyess Air Force Base in Abilene said that dense groupings of wind turbines near the base can produce a “radar shadow” that complicates weather assessments in the area. They told the Texas House of Representatives’ Committee on Defense and Veterans Affairs that they had worked with several developers on making adjustments to their wind farm plans to minimize their impact on base operations. — *Housley Carr*

Nipsco seeks additional \$75.7 million annually

Northern Indiana Public Service asked state regulators Friday for an additional \$75.7 million annually in electricity revenue, but said any increase would not piggyback an approximately \$15 million rate hike approved in August by the Utility Regulatory Commission that remains the subject of negotiations with public interest groups.

The approximately 4% August rate increase was the first for the NiSource subsidiary in 20 years. Initially, Nipsco sought to raise rates by 15.6%, or more than \$100 million a year, in its 2008 application. It later lowered the request to about \$80 million.

Nipsco, the state’s second-largest electric utility with 457,000 customers, wants the latest rate filing to be “fast-tracked,” according to company spokesman Nick Meyer. “At the end of the day, we want to be sure that a solution achieved works well for all parties involved,” he said. “We are open to suggestions as we move forward.”

Since August, Nipsco has been involved in settlement talks with the Indiana Office of Utility Consumer Counselor, the state’s utility watchdog, and other groups, in hopes of fashioning a deal that could avoid a second rate case filing. The settlement talks were prompted by Nipsco, which was unsatisfied with the rate order issued in August. Meyer acknowledged those discussions have not produced an agreement so far, but said Nipsco “continues to meet with parties from the first case in achieving a resolution.”

OUCC officials could not be reached for comment.

Under the new rate filing, residential electric bills would rise by an average of \$5.94/month, or 7.9% when compared with 2010 bills, Nipsco said. The impact on individual commercial and industrial customers would vary, depending on their usage patterns, but on average would go up about 8% per month.

Nipsco CEO Jimmy Staton said in a statement that the new rate filing “is more responsive to the current economic climate and provides a more up-to-date view of the rates required to maintain reliable energy service for our customers and to support Indiana’s economy.”

The new filing uses the Merrillville-based utility’s existing electric rates as a starting point, not the rates authorized in August. Nipsco is asking regulators for the new rates to be approved and implemented in 2011.

During NiSource’s third-quarter earnings call, CEO Robert Skaggs said a new rate case would seek “to restore Nipsco’s electric earnings to an appropriate level and to do so in a manner that is responsive to the interests of its customers and other key stakeholders.”

Meyer said additional revenue is needed for a variety of reasons, including investments in system upgrades to improve reliability and environmental technology and to defray the \$330 million purchase cost of the 535-MW Sugar Creek Energy natural gas-fired plant two years ago from Mirant. The combined-cycle facility is located in Vigo County.

Nipsco consistently has ranked near the bottom in customer service rankings in annual surveys by J.D. Power and Associates, which, like Platts, is one of The McGraw-Hill Companies. But the company showed some improvement in the latest survey.

Nipsco owns about 3,300 MW of generation capacity, including three coal-fired power plants. — *Bob Matyi*

Idaho IOUs criticized for QF size-cut proposal

Idaho’s investor-owned utilities are being criticized by a range of parties — from the state’s dairy farmers to the state’s largest company — for their request that the Idaho Public Utilities Commission immediately reduce the size of Public

Utility Regulatory Policies Act qualifying facilities from 10 MW to 100 kW.

Idaho Power, Avista and Rocky Mountain Power, in a joint November 5 filing, asked that the PUC temporarily reduce the size of qualifying facilities under PURPA because of the growing amount and sophistication of QFs under the federal law. The IOUs asked the PUC to act within 14 days.

Despite that plea, Idaho Power has since filed with the PUC for approval for seven QF projects, including a 115-MW wind farm that has been divided into five segments. In its November 5 filing with the PUC, the IOUs used the example of sophisticated developers that divide up their wind farms to qualify for the QF rates as one reason the reduction should be put in place.

Stephanie McCurdy, a spokeswoman for Idaho Power, said that the company is continuing to execute QF contracts until the PUC rules on the request.

While states are obligated to offer published QF rates under PURPA, Idaho's definition of a QF is wider than most other states allow. Oregon also allows 10-MW projects to qualify for QF rates — 10 MW is the nameplate capacity in Oregon — while in Idaho, 10 MW is the maximum allowed production for such a facility. Oregon also requires five miles between wind farms, while Idaho requires just one, allowing for massive projects to be built and divided up to qualify for the QF rate.

In filings opposing the IOUs' request, the state's dairy farmers and J.R. Simplot, one of the largest privately held companies in the world, say that such a change should not be rushed, and that if the size of such facilities is reduced, that only wind farms — not biomass or anaerobic digesters — should be affected. The dairy farmers and Simplot joined other intervenors, including the Northwest and Intermountain Power Producers Coalition, in opposing the proposal.

"The company agrees with NIPPC that the utilities have not made even a *prima facie* showing of an emergency such that the commission must immediately impose what is essentially a moratorium on new PURPA projects in Idaho," states Simplot.

Eight developers, which had been negotiating with Idaho Power for QF contracts, have filed formal complaints with the PUC in recent days, asking the PUC to approve their contracts before it adjusts the QF size.

Exergy claimed that Idaho Power is violating state law by refusing to sign contracts. In a letter sent by attorney Pete Richardson to the state attorney general and Idaho Power, Exergy quotes an e-mail from Randy Allphin, Idaho Power's PURPA administrator, which said the company was not signing PURPA agreements until the commission rules on its request to reduce the size of PURPA contracts.

Idaho Power responded in a November 17 letter that it was indeed signing contracts as normal, as is evidenced by the seven contracts it submitted to the PUC last week.

Despite the request for expedited handling, it does not appear that the PUC will take up the issue until next month. The item is not on the agenda for its meeting today.

— Pam Radtke Russell

Co-op not obligated to pay for transmission

The "umbrella" service agreement approach to short-term, firm transmission transactions adopted in order 888-A does not apply to long-term deals, the Federal Energy Regulatory Commission said last week in finding a Montana cooperative did not execute a binding agreement with NorthWestern.

As a result, Southern Montana Electric Generation & Transmission Cooperative does not have to pay for 65 MW of unneeded service for the next 20 years.

In an August complaint (Docket No. EL10-82), Southern Montana said it should not have to pay an estimated \$53 million for long-term firm point-to-point service that it never agreed to take and, in any event, does not need. Originally sought as a way to move excess power from a proposed coal-fired plant, the service was no longer required after the project lost most of its financing in February 2008 and was cancelled.

Asserting it was not obligated to take the transmission service, Southern Montana offered two basic arguments in its complaint, noted FERC's November 18 order.

First, it maintained that the parties did not execute a transaction-specific agreement. Second, the co-op argued that regardless of commission policy and open-access transmission tariff requirements, there was no evidence that it ever agreed to bind itself contractually to the service.

In response, NorthWestern said its OATT contains a *pro forma* umbrella service agreement for both short-term and long-term point-to-point service requests. Asserting that it executed an umbrella service agreement with Southern Montana for long-term firm service in 2004, NorthWestern reasoned that when the co-op made a pre-confirmed reservation for 65 MW on the utility's open-access same time system, it became obligated to take or pay for the service.

Last week's order recalled that NorthWestern further argued that Southern Montana was wrong in contending that long-term firm point-to-point contracts aren't valid unless they are individually filed with, and accepted by, the commission.

But FERC did not see things that way, finding that umbrella agreements cover multiple transactions only in the case of requests for short-term service. "Although there is a single agreement," the order said, "it is to be deployed differently depending on whether the request is for short-term or long-term service."

Siding with Southern Montana, FERC held that NorthWestern's OATT "by its terms requires a separate, transaction-specific service agreement for a long-term firm point-to-point request."

In addition, Order 890's requirement that the "actual uses" of transmission capacity must be scheduled on an OASIS "does not mean, as NorthWestern suggests, that OASIS was to be used to create binding contractual relations" for long-term service, FERC said. Rather, the requirement means that once a binding contract is executed, the OASIS is to be used to implement the transaction.

Finding that the dispute hinged on whether NorthWestern

had complied with its OATT and FERC policy, the order declined to address arguments about Southern Montana's intent, disputed communications between the two sides, and claims about the co-op's power scheduler's inexperience in dealing with OASIS.

"We note in this connection only that one of the primary purposes of requiring a written, transaction-specific agreement for each request for long-term firm point-to-point transmission service is to avoid as far as possible disputes such as the one presented here," the order concluded. — *Craig Cano*

CPUC OKs PG&E solar PPAs, hydro deal

The California Public Utilities Commission Friday approved a 25-year power purchase agreement between Pacific Gas & Electric and Sunpower for the 50-MW solar photovoltaic High Plains Ranch III Project.

The project will be located next to Sunpower's planned 210-MW solar High Plains Ranch II Project, in San Luis Obispo County, California, the PUC said. It is expected to be operational in December 2012.

The PUC also approved five PPAs between PG&E and Solar Projects Solutions.

Solar Projects Solutions is a joint venture between Enco Utility Services and Samsung Green Repower.

A PPA for the 50-MW Alpaugh facility was approved unconditionally. The project will be located in Tulare County and is expected to begin deliveries in February 2013.

The other four contracts, which total 80 MW, were approved on the condition that they are modified to qualify as resource adequacy resources under California Independent System Operator rules.

PG&E also won approval for a 10-year, 21-MW hydroelectricity contract with the El Dorado Irrigation District. The hydro facility is based in Pollock Pines, near Sacramento, California, with deliveries to PG&E expected to start in May 2011.

Meanwhile, in other California renewable energy news, Southern California Edison said Friday it signed 21 PPAs last week with renewable developers for more than 250 MW of capacity.

SoCal Ed said it signed 20 PPAs with solar photovoltaic facilities and a deal for 19.5-MW from La Jolla, California-based wind farm developer Spinnaker Energy.

The majority of the solar deals are with Silverado Power, a San Francisco-based developer, the utility said.

The PPAs require the approval of the CPUC. — *Lisa Weinzierl*

Ex-Con Ed manager pleads guilty to charges

A former manager with Consolidated Edison of New York pleaded guilty Friday to charges he accepted and agreed to accept about \$807,000 in bribes from two of the utility's industrial pipe supply vendors, the Department of Justice said.

James Woodason of Edison, New Jersey, pleaded guilty in

US District Court in Manhattan to participating in two separate conspiracies to defraud Con Ed. According to a four-count felony charge, Woodason, a former department manager of purchasing at Con Ed, accepted bribe payments from two industrial pipe supply vendors in exchange for steering contracts to each of those vendors.

DOJ said Woodason was responsible for purchasing and awarding contracts for millions of dollars in goods and services and managing inventory on Con Ed's behalf.

According to court documents, Woodason accepted roughly \$297,000 from one vendor in a bribery scheme that took place from about November 2003 through about August 2008. The government also charged that Woodason accepted about \$45,000 in payments from another vendor in a bribery scheme that took place from about January 2009 until about August 2010. He had also agreed to take an additional \$465,000 in bribes from that vendor, DOJ said.

Woodason was arrested in August in connection with the charges.

In addition to two separate conspiracies, Woodason also pleaded guilty to one count of bribery for receiving a \$20,000 payment related to the 2009-2010 conspiracy and to one count of income tax evasion for failing to report bribes he received as income in the tax years 2004 through 2008.

The department said that under the plea agreement, which is subject to court approval, Woodason agreed not to contest forfeiture of the \$20,000 bribe payment found at his residence on the date of his arrest and agreed to put \$322,000 in escrow to pay restitution to Con Ed.

Woodason is charged with two counts of conspiracy, each of which carries a maximum penalty of five years in prison and a \$250,000 fine. Woodason is also charged with income tax evasion, which carries a maximum penalty of five years in prison and a \$250,000 fine, the department said. The bribery count carries a maximum penalty of 10 years in prison and a \$250,000 fine.

DOJ said the charges arose from an ongoing federal anti-trust investigation of bid rigging, bribery, fraud and tax-related offenses in the power generation industry. — *Jeff Barber*

Calif. Trans Bay Cable to go live

The 400-MW Trans Bay Cable project will begin commercial operation today, the California Independent System Operator said at the end of last week.

The 53-mile direct current line that runs under San Francisco Bay has been undergoing testing for the past few months and was not being operated as part of the controlled grid. When commercially operational, it will transmit power from Pacific Gas and Electric's substation in Pittsburg on the east side of the bay to the Potrero substation in San Francisco, increasing the electrical transmission reliability into San Francisco.

In a market notice Friday, the ISO said the line will

operate as part of its controlled grid within its balancing authority and will be under ISO operational control beginning at 1 pm PST today. It will then become a new participating transmission owner in accordance with the transmission control agreement.

The cable's operation will trigger the closure of Mirant's 206-MW natural gas-fired Potrero Generating Station unit 3. It has been kept operational under a reliability-must-run contract with the ISO, but will be released from the contract once the cable is up and running. Potrero's other, smaller units may also shut soon with further transmission upgrades.

The Trans Bay Cable was originally scheduled to go into service in March. — *Hilary Costa*

Georgia co-ops agree to biomass power deal

A group of seven Georgia electricity cooperatives signed a 10-year power purchase agreement with a biomass-fired power plant under construction in Thomaston, Georgia, the parties involved said Friday.

Cooperative Energy, an umbrella organization for the cooperatives, signed the PPA with Tennessee-based Lancaster Energy Partners, which is building a 15-MW power plant on the grounds of a former textile mill due to be complete in early 2012.

The cooperatives that participated in the deal are Central Georgia, Cobb, Excelsior, Pataula, Snapping Shoals, Upson and Washington.

Robert Tucker, a senior project manager at Energy Consulting Group, which negotiated the PPA, said that the "Lancaster-Thomaston project appears to have the right formula for success. Economical fuel supply is the key issue for biomass projects and this project is sized appropriately for the wood basket of the local area." — *Geoffrey Craig*

CFTC solicits comments on carbon market

The Commodity Futures Trading Commission requested comments Friday on oversight of the US carbon market, as the CFTC prepares an interagency report on the same topic.

The Dodd-Frank Wall Street Reform and Consumer Protection Act required the CFTC to head an interagency team that would issue recommendations for how to regulate the US carbon market. That report is due to Congress by January 21.

Public comments may be submitted online at <http://comments.cftc.gov>, due 21 days after publication of the *Federal Register* notice and request for comment.

Other members of the interagency group are the Secretary of Agriculture, the Secretary of the Treasury, the chairman of the Securities and Exchange Commission, the administrator of the Environmental Protection Agency, the chairman of the Federal Energy Regulatory Commission, the chairman of the Federal Trade Commission and the administrator of the Energy Information Administration. — *Geoffrey Craig*

Chamber slams EPA on coal ash ... from page 1

industry," said William Kovacs, US Chamber senior vice president of Environment, Technology and Regulatory Affairs. "The EPA blatantly side-stepped a critical requirement by not performing a study of the potential impact on employment of this regulation. At a time when our country continues to struggle to dig out of the recession, we simply cannot afford this guaranteed job-killer."

The Chamber decried a "dramatic increase in burdensome regulation by Congress and the administration in several issue areas, including health care, financial markets, energy and labor," saying there is tremendous uncertainty for business owners.

"Once again, EPA is overstepping its bounds to attack the coal industry, and it is ignoring the adverse employment impacts on the nation's construction industries," Kovacs said. The group charged that the federal Resource Conservation and Recovery Act requires EPA to study the effects on employment of new environmental regulations.

Environmental groups such as Environmental Integrity Project and Earthjustice have launched a campaign calling for EPA regulation of coal ash as hazardous waste following a massive spill at the Tennessee Valley Authority's Kingston plant in December 2008 that unleashed 5 million cubic yards of coal ash into surrounding rivers and land areas.

EPA is considering whether to regulate coal ash as hazardous as requested by environmental groups, or under non-hazardous RCRA rules that would be less stringent.

One EPA proposal would regulate the substance as hazardous waste under Subtitle C of the Resource Conservation and Recovery Act, creating a comprehensive program of federally enforceable requirements. The other major option, under Subtitle D of RCRA, would designate the ash as non-hazardous waste. It would give EPA authority to set performance standards but would give neither the agency nor states enforcement power, and it would limit enforcement to state or citizen lawsuits.

More than 31 Democrats and Republicans from 22 states in Congress several months ago wrote EPA Administrator Lisa Jackson on the issue, urging EPA not to regulate coal ash as hazardous. They expressed concern over the impact on electricity rates, jobs and industries that recycle coal ash. — *Jason Fordney*

Wind affecting MISO power prices ... from page 1

100% from 2008. Much of this growth is due to new members in the grid operator's West Reliability Region, the IMM said.

The addition of wind resources is affecting power prices and the financial transmission rights markets in MISO. FTRs are used by companies to hedge their congestion costs. The increased wind output resulted in a 61% increase in congestion out of the West, the IMM report shows, contributing to a 24% increase in congestion charges in the third quarter, compared with the third quarter of 2009. Third-quarter power prices in the wind-

heavy MISO West were nearly \$10/MWh lower than prices in the East, according to the report, which attributed the lower prices to West-to-East congestion.

MISO has been exploring various solutions to congestion through a series of studies it refers to as regional generation outlet studies. The results of these studies identified three different scenarios for potential transmission lines. About \$15 billion worth of transmission lines overlap from each of those scenarios, said MISO's Laverty. MISO also expects to hear back from the Federal Energy Regulatory Commission by the end of the year on a cost-allocation proposal that would socialize some of the costs associated with the construction of these lines, which MISO calls multi-value projects.

Wind eyed as dispatchable resource

There is some concern that a new plan by MISO — to allow wind to register as a dispatchable resource and potentially set prices in the real-time market — could put downward pressure on prices, even when new transmission lines are built. This concern was voiced by some MISO board members during an October board of directors market committee meeting. One board member expressed concern to David Patton, president of Potomac Economics, that if wind in parts of the region set prices during shoulder seasons, baseload generation will not be able to remain operational, causing reliability problems.

On November 1, MISO filed changes with FERC for permission to allow intermittent resources, such as wind, to register as a dispatchable resource in its footprint. Currently, though wind can be offered into the day-ahead market, it is not offered in the real-time market. If there is too much wind power on the system, MISO operators call the facility and the resources are manually curtailed. Making such generation dispatchable would allow MISO to bring it up or curtail it as needed, through normal market operations instead. ISO New England and the PJM Interconnection also allow intermittent resources to bid into their markets.

Making intermittent resources dispatchable will have many benefits, such as helping with congestion management, MISO said. Dispatchable wind will also reduce the probability of minimum generation events, which is when there is more generation on the system than load. Finally, the costs of intermittent resources will be reflected in the real-time locational marginal prices. Manual curtailments of these resources are not reflected accurately in LMPs, according to a MISO presentation given to stakeholders in October.

Because wind tax credits and renewable energy credits make wind a low-cost resource, wind resources are usually able to bid into the market at a negative price, explained Patton. In the day-ahead market, this often still results in a positive price but just lower than what it would otherwise be. In the real-time market, it can lead to wind setting the price, which would mean negative prices or at least a downward influence on prices.

Patton said that once new transmission is built, low wind prices will impact a broader area, but probably not the entire MISO region, as some MISO board members have worried.

"The downward price pressure concern is real," said a source representing a power marketer that is active in multiple US power markets. "Wind generators have subsidies that do not show up in prices. They also have similar cost structures that differ perhaps only on variable operations and management."

"The larger policy question still looms," he said. "How to compensate existing fossil resources that we know are required for balancing intermittency of wind when the same wind is driving prices even lower?"

Integration of wind seen as a challenge

The successful integration of resources like wind will be tricky, according to Michael Giberson, a professor with the Center for Energy Commerce at Texas Tech University.

"The problem is that there are many moving parts," said Giberson. "Wind power costs less because of the wind tax credits, and with the value of a renewable energy credit, they can afford to bid into the market at negative prices. Baseload generation will stay on because that is more cost-effective than cycling on and off. Eventually some of the baseload will be pushed out."

But Giberson said there is still not enough wind in MISO to have a big effect once new transmission lines are constructed to alleviate congestion, unlike in Texas. But he added that because the increase in wind is more a result of policy shifts than market demand, when there is a critical mass of wind generation in the system, then traditional market-based solutions may not be enough to ensure reliability on the system.

Potomac Economics' Patton said there are two approaches to deal with extremely low prices. One is to make adjustments to the capacity market. By reducing the amount of wind that is counted toward capacity requirements, it tightens the market.

Another approach is to loosen the ramping capabilities, which might help generators keep up with drastic changes in wind. — *Nushin Huq*

Mo. governor on board for bill ... from page 1

and its citizens," Susan Gallagher, Ameren Missouri spokeswoman, said.

Last year, Nixon opposed legislation to lift the CWIP ban. The legislation was strongly opposed by large industrial customers and environmental and consumer groups. The groups claimed that overturning CWIP could lead to 40% rate hikes.

The legislation stalled, causing Ameren Missouri to withdraw plans to expand its Callaway plant by 1,600 MW. At the time, Ameren said it needed CWIP to be able to finance the roughly \$6.8 billion nuclear project. Without CWIP, Ameren estimated that its financing costs would increase by about \$3 billion. In June 2009, Ameren asked the Nuclear Regulatory Commission to suspend its review of a combined construction and operating license application for the proposed plant. Ameren spent about \$67 million on planning for the plant.

Partners in the consortium seeking to build a new plant include: Ameren, Associated Electric Cooperative,

Empire District Electric, the Association of Missouri Electric Cooperatives, Kansas City Power & Light and the Missouri Public Utility Alliance.

“Given the uncertainties regarding how best to replace aging power plants, the potential impact of anticipated [Environmental Protection Agency] regulations, and continued consideration at the federal level of carbon tax proposals, Ameren Missouri believes strongly that our state must keep all options on the table — including additional nuclear power generation,” said Warner Baxter, Ameren chairman, president and CEO.

Missouri state senator-elect Mike Kehoe, a Republican, has agreed to introduce the nuclear plant legislation.

Adding a nuclear plant would diversify Missouri’s power sources, which tilt toward coal-fired generation. Ameren’s total generation, including unregulated plants, is 85% coal, with 77% of Ameren Missouri’s supply coming from coal plants. The utility owns 5,436 MW of coal-fired generation. — *Ethan Howland*

China dismisses allegations ... from page 1

alternative vehicle and energy-efficient consumer products technology.

The petition alleges that China uses “prohibited subsidies contingent on export or domestic content,” and that the Chinese government “discriminates against foreign firms and goods,” and contends that China “imposes technology transfer requirements on investors.”

The USW petition also accused China of restricting access to critical materials, specifically exports of rare earth minerals, plus tungsten and antimony.

US Trade Representative Ron Kirk on October 15 “initiated an investigation under Section 301 of the 1974 Trade Act with respect to acts, policies and practices of the Government of China affecting trade and investment in green technologies.”

The USTR says it will take 90 days to conduct the investigation to consider “whether these acts, policies and practices deny US rights or benefits under the GATT 1994, under the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), and under China’s Protocol of Accession to the World Trade Organization.”

The USTR said that allegations that are supported by sufficient evidence and that can effectively be addressed through WTO dispute settlement, “we will vigorously pursue the enforcement of [using] our rights through WTO litigation.”

Anyone wanting to file written comments to the USTR had until November 15 to do so. There have been 33 such comments filed.

The comments were submitted to the USTR by Dexiong Deng of the Ministry of Commerce’s Bureau of Fair Trade.

He told the USTR: “This is not a decision about whether the US or China is a trade protectionist. Rather, this is a touchstone on whether the US is indeed visionary in developing renewable energies as an alternative to the traditional fossil energies.”

The Commerce Ministry tells the USTR: “Before making any move, the US must assess whether the US, by itself alone, is able to mitigate the competitive gap between the renewable and the fossil. We expect the answer to be no.”

“If the US closes the door for trading with the rest of the world, including China, in renewable energy products,” the filing said, “the US may significantly delay the already long struggle for developing alternative energy sources, if not entirely destroy this opportunity for the humankind.”

Allegations called ‘factually erroneous and legally unfounded’

The filing said that the “USTR should dismiss the petition because the allegations contained in the petition are factually erroneous and legally unfounded.”

The filing argued that the USW “rests its allegations of displacement of US imports to China” on a Chinese funding program called “the special fund for wind power manufacturing.”

“The Government of China confirms that no assistance was provided under this program in any single instance in 2010,” the filing contends.

However, the filing argues, “This cannot compare with the largescale assistance provided under the American Recovery and Reinvestment Act.” The Chinese government’s filing says, “A total of \$32.7 billion alone is specifically targeted to grants for energy efficiency, energy infrastructure, and renewable energy

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The filing contends that the Chinese government ceased using an export product R&D fund "as of 2007" and "officially revoked" the fund in May 2009.

It contends that the "export credit practice of the China Ex-Im Bank is fully consistent with China's obligations under the SCM Agreement, and, therefore, does not constitute a prohibited export subsidy."

The Commerce Ministry argues that export guarantees and insurance for green technology from the government trade insurance agency Sinosure are "also fully consistent with China's obligations" and "shall not be considered an export subsidy unless the [insurance] premium rates are inadequate to cover the long-term operating costs and losses of the program."

On this score the Chinese government provided the USTR Sinosure profitability data that shows the agency losing money in the year 2008.

The Chinese blame the US for the 2008 losses due to "an outbreak of largescale breaches of existing contracts," 30.5% of which were caused by the US, the filing contends.

"It would be unreasonable for the US to blame China for export subsidies due to the fact that their own citizens are breaching contracts. The Chinese government does not believe

that the USTR will do so. Based on the foregoing, the government of China urges the USTR to dismiss this allegation."

The Commerce Ministry's filing denies that China discriminates against foreign renewable energy firms, such as manufacturers of wind turbines.

It says that the USW's petition spends seven pages making allegations based on 2005 local content rules that were "officially abolished" less than a year ago, in December 2009.

The share of the Chinese wind market in 2005 that was held, collectively, by non-Chinese firms was over 80%. By early 2010, the share was below 13%.

In its filing to the USTR, China's Ministry of Commerce uses select supply deals announced in 2008 and 2009 to suggest that non-Chinese firms have open access to the Chinese wind market.

It also uses bid price data to prove why the lower-cost Chinese producers are winning contracts, while foreign firms are not.

The filing describes how 12 "enterprises" submitted 177 bids for two large wind farm projects, with China's second-largest turbine manufacturer, Goldwind Science & Technology, coming in as low bidder.

The filing says, "Gamesa [the Spanish firm] was the only foreign company that participated in this bid and its price ... was 47.35% higher than Goldwind's bid." — *Jeffrey Ryser*

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