

## **FERC Issues Orders on Northwest Transmission Development Proposals**

**June 29, 2009**

On June 18, the Federal Energy Regulatory Commission (FERC) issued orders addressing two separate petitions for declaratory order submitted by NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern). In the first petition, NorthWestern, a public utility, and its affiliate Mountain States Transmission Intertie, LLC (MSTI), requested certain approvals in connection with the MSTI transmission project, which consists of a proposed 500 kV transmission line running from a substation near Townsend, Montana, on NorthWestern's transmission system, to an interconnection with Idaho Power Company. MSTI and NorthWestern also requested that FERC authorize MSTI to charge negotiated prices for transmission rights over the MSTI project.

In its order on the joint MSTI-NorthWestern petition, FERC found that negotiated rates for MSTI, described as a stand-alone transmission company, would not be just and reasonable under the circumstances. In determining whether negotiated rates would be just and reasonable, FERC considers, among other things, whether the merchant transmission owner has assumed the full market risk for the cost of constructing a particular transmission project and is not building within the footprint of its own (or an affiliate's) traditionally regulated transmission system. In this case, FERC found that the merchant transmission owner had not assumed the full market risk for the project because NorthWestern had funded the preliminary siting, planning, and environmental work. In addition, FERC found, the MSTI project would be located within the footprint of NorthWestern's traditionally regulated transmission system, which raised additional affiliate abuse concerns, such as a disincentive to compete among the interconnected affiliates, and an incentive for NorthWestern to withhold transmission capacity or delay the expansion of its facilities.

In the second petition, NorthWestern requested approval of an open season process for its proposed Collector Project, which is a series of five 230 kV generator lead lines that would link sites for proposed generation projects with the NorthWestern transmission system, including the MSTI project. The Collector Project is intended to address the more than 5,000 MW of generator interconnection requests in NorthWestern's queue. NorthWestern also sought waiver of various provisions of its Open Access Transmission Tariff (OATT) to facilitate the open season process by, for example, enabling NorthWestern to study the bids submitted therein in a cluster and accommodating a minimum 20-year service term.

In its order on the second petition, FERC granted in part and denied in part NorthWestern's requests. FERC found that the requested waivers of NorthWestern's OATT pertained to open access transmission service and were not applicable to the generator lead line interconnection service that NorthWestern had

proposed. However, FERC found that the Large Generator Interconnection Procedures in the OATT may be applicable, and that NorthWestern could subsequently request waiver of such provisions. FERC also found that the open season process proposed by NorthWestern was a reasonable accommodation of the large number of generator interconnection requests in its queue, and provided further guidance on how existing customers in the queue should be treated during the open season.

For further information about the topics discussed in this LawFlash, please contact either of the following Morgan Lewis attorneys:

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