

FERC Issues Notice of Inquiry Regarding Locational Exchanges of Electrical Power

February 18, 2011

On February 17, in Docket No. RM11-9-000, the Federal Energy Regulatory Commission (FERC) issued a Notice of Inquiry (NOI) seeking information on locational exchanges of electric power and comments on whether and under what circumstances such exchanges should be permitted. The NOI arose out of a petition for declaratory order filed in Docket No. EL10-71-000, in which Puget Sound Energy, Inc. (PSE) sought a finding that locational exchanges do not have to be conducted under an Open Access Transmission Tariff (OATT). With respect to PSE's petition, FERC also issued an order on February 17 deferring action on the petition pending the outcome of the NOI.

In its petition, PSE defined a locational exchange as a pair of simultaneously arranged wholesale power transactions between the same counterparties in which party A sells electricity to party B at one location, and party B sells the same volume of electricity to party A at a different location with the same delivery period, but not necessarily at the same price. PSE requested that FERC find that a locational exchange is not a transmission transaction that must be conducted under an OATT, but that it instead consists of two simultaneous wholesale power sales. In its petition, PSE argued that locational exchanges are in broad use and provide significant benefits to the market.

In its order deferring action on PSE's petition, FERC found that there was insufficient information in the record to make a determination on PSE's petition and that the petition raised significant policy issues. FERC initiated a separate NOI proceeding in Docket No. RM11-9-000 to consider the proper regulatory treatment of locational exchanges.

The NOI requests information regarding the characteristics of locational exchanges and how market participants use and benefit from them. FERC also seeks comment on a number of related issues, including (i) the effect of locational exchanges on system congestion; (ii) whether locational exchanges may offer opportunities for transmission providers and their merchant affiliates to unduly discriminate against other customers; (iii) whether a party with network transmission rights could use locational exchanges to circumvent open access transmission principles; (iv) how locational exchanges might affect aspects of transmission services, such as billing determinants and distribution of costs; (v) what procedures would be necessary to ensure appropriate locational exchange data reporting; (vi) the implications of locational exchanges for transmission system reliability; (vii) the appropriate pricing policy for locational exchanges if FERC determines that they are subject to an OATT; and (viii) whether locational exchanges should be permitted on a case-by-case basis or generically. FERC added: "While the Commission has spoken to locational exchanges in the past and that guidance continues to apply today, any policy determinations made in this proceeding will only be applied prospectively."

Comments on the NOI are due 60 days after publication of the NOI in the *Federal Register*.

If you have any questions or would like more information on the issues discussed in the LawFlash, please contact any of the following Morgan Lewis attorneys:

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