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INGAA report seeks Hill action on gas pipe delays

BY CHAD WOODWORTH

While Congress acted in the Energy Policy Act of 2005 to speed federal permitting of new interstate natural gas pipelines, an increasing number of those projects have seen approval delays since the law was passed, according to a new industry study that calls for legislation to help the Federal Energy Regulatory Commission enforce deadlines for completion of reviews by other federal agencies.

The study, issued January 16 by the research arm of the Interstate Natural Gas Association of America (INGAA), also says that despite the growing permitting problems, pipeline developers have rarely exercised provisions of the

Mississippi Power reaches deal with regulators on clean coal plant costs

BY CHRIS HOLLY

In an unusual deal aimed at ending protracted litigation over cost recovery for a \$2.76 billion gasified coal plant, Mississippi Power Co. Thursday inked a settlement agreement with state regulators that would give the utility a new opportunity to recover millions of dollars in project construction financing costs while mitigating high costs for Mississippi Power ratepayers, including giving them a slice of the revenues earned from licensing the plant's proprietary gasification and carbon-capture technology.

The settlement would give Mississippi Power the opportunity to recover up to \$172 million in construction-related financing

costs it expects to incur through 2013 while building its 542 megawatt integrated gasification combined cycle (IGCC) coal plant in Kemper County, Miss., which is a lead facility nationally for demonstrating advanced clean coal technology.

The agreement also calls for the Mississippi Public Service Commission and the utility to ask the state Supreme Court to dismiss a challenge the utility filed in July asking the high court to strike down a June commission order barring recovery of \$55 million in Kemper construction-related financing costs Mississippi Power had incurred.

In denying the cost-recovery request, the commission cited separate ongoing litigation before the high court in which the Mississippi chapter of the Sierra Club is challenging an

Maine PUC okays pricey terms for Statoil floating wind pilot

BY ERIC LINDEMAN

Reflecting deep divisions over the project among residents and politicians in the green-leaning state, the Maine Public Utilities Commission voted 2-1 Thursday to allow Statoil North America to move forward with an innovative floating wind farm pilot project off the state's coast by approving the terms of a pricey power purchase agreement that Statoil will seek to secure with one or more of the state's regulated utilities.

The commission backed the Hywind Maine initiative despite concerns expressed by one of Maine's biggest utilities and Maine Gov.

Paul LePage (R) that the costs of the project to ratepayers would outweigh any economic or job benefits to the state.

However, Hywind Maine has the support of Sen. Angus King (I)—the state's former governor and newly elected U.S. senator—Democrats in the Maine legislature and renewable energy advocates.

Maine residents have debated the project since Statoil North America, a unit of Norway's government-controlled oil and gas giant Statoil ASA, proposed Hywind Maine in May 2011 in response to a request for proposals issued by the state after its legislature passed the Ocean Energy Act in 2010. It was the only company to respond.

Statoil submitted a lease application that October to the Interior Department's Bureau of Ocean Energy Management to install four moored, floating turbines in a 22 square-mile area about 12 nautical miles offshore Boothbay. It envisions the 12 megawatt Hywind as a pilot project for more expansive offshore wind energy development.

The vote by the Maine PUC approved Statoil's term sheet for a proposed 20-year power purchase agreement (PPA) to sell electricity from the pilot to one or more of the state's investor-owned utilities—Bangor Hydro, Central Maine Power (CMP) or Maine Public Service Co.

Although PUC Chairman Thomas Welch had said publicly in October that he would vote against the project unless Statoil revised its term sheet to



USEC sells spent fuel storage unit to Japanese company

USEC Inc., moving to shore up its finances and raise cash for its new uranium enrichment plant project, announced Thursday it would sell its NAC International Inc. unit to Hitz Holdings U.S.A. Inc., a subsidiary of Hitachi Zosen Corp., for \$45 million in cash.

Maryland-based USEC said the sale of NAC, a leading supplier of spent fuel storage and transport equipment and services to the nuclear industry, is part of its effort to focus resources on deployment of its advanced American Centrifuge enrichment technology at a plant that USEC is building in Ohio.

Financially ailing USEC has been struggling to pay for the \$3.5 billion American Centrifuge plant, and has leaned heavily on federal assistance to keep the project moving forward.

USEC said the sale would also bolster its balance sheet and represented a hefty profit on its 2004 acquisition of NAC, which it bought for \$16 million to diversify its business line.

NAC has thrived in recent years as the lack of disposal options for spent reactor fuel forced many utilities to increase their dependence on dry storage casks. USEC said

NAC expects to deliver more than 100 dry storage systems in 2013, and that the accident at Japan's Fukushima Daiichi plant also offered major new opportunities for NAC given Hitachi Zosen's strong position in serving cleanup operations at the stricken nuclear plant.

Japan-based Hitachi Zosen has a long-standing business relationship with NAC as a fabricator of NAC's dry cask storage and transportation systems and is a leading supplier of such systems in Japan.

Among other regulatory reviews, the sale of NAC will have to be cleared by the Committee on Foreign Investments in the United States, a federal panel that examines sale of U.S. businesses to foreign companies to assure they do not compromise national security.

Maine PUC okays pricey terms for Statoil floating wind pilot... (Cont'd from p. 1)

abate concerns about high generation costs and projected long-term economic benefits to the state, he ended up casting the vote that approved moving ahead with a PPA for the project.

After Welch tabled action of the application in October, Statoil did amend its term sheet in January to reduce the original price for Hywind generation from 29 cent per kilowatt-hour to 27 cents.

However, that price is still significantly higher than the initial 18.7 cents that National Grid will pay for power from the long-delayed Cape Wind offshore wind project off the coast Massachusetts near Cape Cod.

CMP submitted comments to the PUC earlier this week stressing that even with its downward price revision, Statoil is proposing a Hywind electricity price that is 4.5 times higher than current market prices.

"That translates to a \$190 million ratepayer subsidy to Statoil," wrote CMP Senior Counsel Richard Hevey.

Bangor Hydro and Maine Public Service declined comment on the term sheet revisions, saying they believed they would not have to buy from Hywind because they already had signed long-term PPAs to buy expensive power from an ocean energy project in the state.

The two utilities told the PUC that in December 31 contracts they accepted the entire

obligation for Ocean Renewable Power Co.'s (ORPC) tidal power project in Washington County—20-year PPAs for an initial 4 MW increasing up to 50 MW—with "an understanding that [they] would not be responsible for any obligation under the Statoil contract."

The term sheet for the Portland, Maine-based ORPC project sets rates at 21.5 cents per kilowatt-hour.

Statoil also sought to make its project more politically palatable by revising its term sheet to promise "commercially reasonable efforts" to give 40 percent or more of the work associated with Hywind to Maine companies; employ at least 150 residents during construction; and locate the project's operations and control center in Maine.

In addition, Statoil offered a "good faith" commitment to use Maine contractors in any commercial offshore facilities the company may develop along the Eastern Seaboard from Maine to Maryland before 2025.

But Patrick Woodcock, director of the governor's energy office, urged the commission Wednesday to reject Statoil's revisions as not ensuring that the Hywind project would benefit Maine's economy or protect the interests of the state's ratepayers.

In written comments to the PUC, he said: "While the supplier certainly indicates the in-

tention of supporting Maine jobs, this office does not believe the supplier has demonstrated clear investments in the state of Maine." He added that the 2010 Ocean Energy Act calls for a "demonstrated" commitment to investment in Maine manufacturing.

Also in written comments, the Industrial Energy Consumer Group, which represents businesses that use large amounts of electricity, said the high costs of Hywind generation "clearly outweigh the speculative benefits that it may offer, and therefore violates the requirements of the Ocean Energy Act."

But Welch said that while voting for the project's PPA was "a difficult decision," he was ultimately persuaded by Statoil's "price reductions and indications of future activities in Maine, recognizing that those are speculative."

King was sanguine about the financial and clean energy benefits of Statoil's project and its prospects for expansion—and he warned that Maine would regret losing Hywind to a more hospitable host country or state.

"I haven't the slightest doubt that if we reject this proposal, Statoil and their competitors will simply go elsewhere," he said in his comments to the PUC, "and we will read with regret of great projects, thousands of jobs and renewed coastal economies in Scotland, Portugal or (worse yet!) Massachusetts."

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Texas regulator to be NARUC gas chair Texas (PUCT) from 2007 to 2012.

Texas Railroad Commission Chairman Barry Smitherman has been appointed chairman of the National Association of Regulatory Utility Commissioners' natural gas committee, replacing

outgoing chairman Timothy Simon of California.

Smitherman, appointed to the Texas oil and gas regulatory body in 2011, previously chaired the Public Utility Commission of

Among other key goals, the NARUC gas committee is leading efforts by the state regulator group to increase coordination between electricity and gas sectors in light of growing gas use by power generators.

Mississippi Power reaches deal with regulators on costs... *(Cont'd from p. 1)*

April commission order granting a certificate of convenience and public necessity for the project.

The adverse cost recovery order issued by the commission in June shocked Mississippi Power, and led Fitch Ratings in July to downgrade the credit outlook for the Southern Co. subsidiary from "stable" to "negative," saying the uncertainty posed by the order "has already caused significant stress on Mississippi Power's credit metrics."

The state high court has scheduled oral argument on the Mississippi Power appeal of the commission's June order for Monday. The utility and the commission late Thursday filed a petition asking the court to dismiss the case in light of the settlement agreement.

Sierra Club officials said the settlement agreement emerged in part because the high court has allowed an intervener in the case to argue Monday that a state statute authorizing the recovery of construction-related financing costs—a law specifically enacted to enable the Kemper plant—violates the Mississippi Constitution.

The deal establishes a schedule under which Mississippi Power will file a new request for construction work in progress (CWIP) costs within three months and the commission must respond with an order approving or denying the request within three months after it receives the Mississippi Power filing. That would mean a final commission order on the CWIP rate request no later than late June.

The deal also responds to commission concerns about the substantial rate increases—estimated at 30 percent or more—that the Kemper project will impose on Mississippi Power's residential customers.

In a novel wrinkle clearly designed to make the deal more attractive for ratepayers, Mississippi Power agrees to provide for 30 years a credit to its customers of 10 percent of any royalty revenues that it or affiliate Southern Holdings LLC receives from the sale of proprietary gasification and carbon capture technology being demonstrated at the Kemper plant.

The Transport Integrated Gasification (TRIG) technology was developed jointly by Southern Co. and Houston-based engineering firm KBR LLC with support from the Energy Department. TRIG is designed to allow the combustion of synthesis gas from low-rank coals with exceedingly low pollution levels, while cutting emission of carbon dioxide by roughly 50 percent.

In a deal announced in October, Southern, through its subsidiary Southern Generation Technologies LLC, and KBR will market TRIG to power companies worldwide. Southern Generation Technologies was formed in 2010 to license advanced power generation technology developed and owned by Southern and its subsidiaries.

In another apparent move to shield ratepayers from huge rate impacts, the settlement agreement obligates Mississippi Power to work with commission staff to propose within three months a rate plan to govern cost recovery for the Kemper project during its first seven years of operation. According to the agreement, this plan "should be designed to mitigate and stabilize the up-front rate impacts to customers during the ramp-up period for the Kemper plant by locking in a series of annual revenue requirements for the first seven years of operation."

The plan would incorporate a \$2.4 billion cost cap for the base rate portion of the project, but allows the commission to exclude other costs from the cap. It also allows Mississippi Power to pursue alternate financing for costs it incurs that are not otherwise recovered in any subsequent rate proceeding.

The design of the rate plan appears to reflect "acknowledgments" by the commission and the utility that "certain regulatory and accounting options" exist that would provide benefits to customers by requiring that a portion of rates collected before the plant begins operating and during the pendency of the Sierra Club challenge before the state Supreme Court be "be recorded in accounts for the benefit of [Mississippi Power's] cus-

tomers to mitigate future rate impacts, while mitigating the risk posed to customers should the Kemper Project's certificate ultimately be determined by the courts to be invalid."

The deal calls for the commission to act on this seven-year rate proposal within four months of receiving it. However, the agreement appears to suggest that the commission currently lacks the authority to approve such a rate plan. A section of the agreement that enumerates a series of conditions under which Mississippi Power may opt out of the deal states that the utility can withdraw upon the "failure of the proposed legislation authorizing the seven-year rate plan described herein to become law."

This provision is puzzling because the opt-out provisions are the only place in the six-page agreement in which the word "legislation" appears. Mississippi Power and the commission did not respond to repeated requests for clarification on this provision. However, an environmentalist said Thursday that legislation appearing to give the commission authority to approve the seven-year rate plan was recently introduced in the state Senate.

The Kemper project has been buffeted by intense opposition from local environmentalists, who charge it is far too expensive for Mississippi Power's customers.

Sierra Club officials panned the settlement deal as a "\$172 million flip-flop by the commission," noting only months ago the panel had refused to approve CWIP recovery while the environmentalists challenge remained before the state high court.

"The Mississippi Public Service Commission has flip-flopped again, and it will cost hard-working families millions," Louie Miller, director of the Sierra Club's Mississippi chapter, said Thursday. "Today's reckless actions by the commission have opened the door for Mississippi Power to charge their customer base for the boondoggle Kemper County coal plant while it's under construction with no guarantee that the plant will ever produce a single megawatt of electricity."

Wholesale power prices hit record low in New York in 2012

In a record driven by low natural gas prices, New York's grid operator reported this week that the average wholesale price for electricity in the state in 2012 was the lowest since it established the state's competitive power markets 12 years ago.

The New York Independent System Operator said Wednesday the average annual wholesale price of electric energy in New York was \$45.23 per megawatt-hour (MWh) in 2012, below the previous record low price of \$48.63 per MWh in 2009.

As a primary fuel for power plants, natu-

ral gas sets the price for power in states and regions with competitive wholesale markets, and gas prices plummeted last year due to rising U.S. production.

The rock-bottom prices in New York occurred despite a decrease in the state's generating capacity, with more than 1,400 megawatts of older power plants being retired or mothballed last year and only 745 MW of new generation coming on line.

INGAA report seeks Hill action on gas pipe delays... *(Continued from p. 1)*

Energy Policy Act of 2005 (EPACT) allowing them to sue federal agencies responsible for inordinate delays.

The study noted that EPACT authorized FERC to require other federal agencies to make final decisions on pipeline permits no later than 90 days after FERC publishes its final environmental review under the National Environmental Policy Act (NEPA).

However, the study said the 90-day deadline clearly has been ineffectual in speeding permitting because more pipelines have experienced delays since EPACT was enacted.

Before EPACT implementation, 7.7 percent of projects failed to get all agency approvals within 90 days of FERC's final NEPA assessment, according to the study. After the 2005 law was passed, 28 percent of pipeline projects experienced delays of more than 90 days, with the percentage of projects experiencing delays of 180 days or more after FERC NEPA approval jumping from nearly 3.5 percent prior to EPACT to 19.5 percent after its enactment.

The report did not offer any explanations for the increased delays, but pipeline projects have faced growing opposition over potential environmental and safety impacts in recent years, as evidenced by controversy over the Keystone XL oil sands project in Nebraska, where critics have cited contamination threats to sensitive ecosystems and endangered species. Natural gas pipelines have received additional scrutiny over safety issues in crowded urban areas after several high-profile accidents have caused multiple fatalities.

But the INGAA Foundation study said extended federal reviews have frustrated the congressional intent in EPACT to speed pipeline permitting, and that the problem is that EPACT "does not give FERC any means to enforce the 90-day deadline or impose consequences on the agencies for failure to comply."

Further, pipelines facing delays have not ex-

ercised EPACT provisions allowing them to file suit in the U.S. Court of Appeals for the District of Columbia Circuit against federal agencies that exceed the 90-day deadline for completion of project reviews, according to the study.

None of the companies interviewed for the INGAA report chose to pursue legal action even when they faced delays beyond 90 days. More generally, while FERC has approved more than 100 pipeline projects since EPACT was passed, the legal option "has rarely been used," said the study, although it did not specify how many times that option had been exercised.

"The fact that none of the survey respondents for the post-EPACT 2005 projects petitioned for review, even though these projects experienced increased delay, is a strong indicator that the judicial remedy provided by EPACT 2005 is not an effective method to combat delay," the report said. "Despite the increase in number and length of delays, pipeline companies are very reluctant to use legal remedies to address agency delay in the permitting process."

The study called for congressional action to amend the Natural Gas Act to give FERC greater authority to ensure timely permitting of pipeline projects, which see increased construction costs and miss in-service dates due to federal delays.

"In order to achieve the [law's] stated goal of streamlined permitting, there must be consequences for agencies that fail to meet deadlines," the study said. "Additional process improvements, regulatory revisions, and/or legislative actions likely are needed. EPACT has not lived up to its promise to reduce the time required to obtain necessary federal permits and further amendments to the act may be the solution."

Specifically, the report called for amending the Natural Gas Act to give FERC authority to

grant approval of a pipeline project if another agency does not meet the permitting timetable set by FERC.

In addition, the report suggested statutory changes that would result in automatic permit approval if an agency fails to come to a permitting decision by the deadline.

The report, based on surveys and interviews of pipeline company personnel representing 51 interstate natural gas pipeline projects completed before and after the passage of EPACT, found that state agencies with delegated federal permitting authority were a common source of delays. In addition, survey respondents said they encountered major delays when fulfilling U.S. Fish and Wildlife Service requirements under the Migratory Bird Treaty Act and when complying with Army Corps of Engineers requirements under the Clean Water Act.

To improve the permitting process, the INGAA Foundation suggested that Congress or the courts take action to loosen the requirements under the Migratory Bird Treaty Act to allow the "take" of migratory birds during gas pipeline development. Further, the report called for recognition by other agencies that FERC's National Historic Preservation Act and Endangered Species Act reviews are "sufficient" for other permits that require them, minimizing duplicative reviews.

FERC could also take a harder line with state and local laws that overlap or conflict with the Natural Gas Act, which preempts those requirements, by revising its policy that promotes local engagement and cooperation, the INGAA Foundation said. In addition, Congress could change the law to authorize pipeline companies to access private property for "non-invasive" project surveys and to authorize FERC to apply its federal agency deadlines to non-federal authorizations required from state and local agencies.