

To: Our Clients and Friends

January 25, 2010

FERC Announces New Initiatives in Wholesale Electricity Markets

On January 21, 2010, the Federal Energy Regulatory Commission (“FERC”) announced five separate initiatives with potentially wide-ranging implications for buyers and sellers in wholesale electricity markets, including utilities, power marketers, and large customers as well as renewable and conventional electric energy producers. One initiative proposes to relax merger rules, while another proposes much more stringent credit rules for organized wholesale electricity market participants. Two other actions are Notices of Inquiry designed to gather information necessary to propose new rules for wholesale electricity markets. **Interested parties may file comments with FERC on the foregoing proposals and inquiries within 60 days after FERC publishes them in the Federal Register.** The fifth FERC decision explained herein approves electric transmission incentives for battery storage devices to be deployed on the California Independent System Operator (“ISO”) grid.

Merger Approval Rules

FERC’s current rules require detailed showings to secure its approval for the acquisition of more than 10 percent of the voting securities of any “public utility,” which includes an entity holding a market-based rate authorization from FERC for sales of electric power at wholesale. Such an entity could be the owner and operator of a renewable or conventional electric generation facility. FERC now proposes a “blanket authorization” for the acquisition of more than 10 percent, but less than 20 percent of the voting stock of any “public utility.” Moreover, the public utility would be pre-authorized to dispose of that amount of its voting stock. The acquiring entity would be required to file a form with FERC affirming that its stock acquisition would not result in its de facto control of the public utility. Companies investing in entities deemed to be “public utilities” under FERC rules should consider filing comments.

Credit Reforms in Organized Wholesale Electricity Markets

In response to some large defaults on power purchased on credit in organized wholesale electricity markets, FERC is proposing certain credit reforms. Its new rules would shorten the credit settlement

This Client Bulletin is published for the clients and friends of Bryan Cave LLP. Information contained herein is not to be considered as legal advice. This Client Bulletin may be construed as an advertisement or solicitation. © 2009 Bryan Cave LLP. All Rights Reserved.

cycle to “no more than seven calendar days with no more than an additional seven calendar days for final payment.” In addition, FERC proposes to limit unsecured credit to “no more than \$50 million per market participant.” It further proposes to eliminate unsecured debt in financial transmission rights markets; impose minimum financial qualifications for market participation; require “material adverse change” provisions that would impose additional collateral obligations; and shorten the “cure period” for posting additional collateral. Buyers and sellers in wholesale electricity markets should consider filing comments.

Integration of Variable Electric Energy Resources (“VERs”)

FERC regards wind and solar electric generation resources as VERs because the amount of electric energy they produce at any given time depends on variable weather conditions. The variability in output presents challenges to utility transmission grid operators who must balance demand for electric power with supply in order to maintain reliable service in real time. Through a Notice of Inquiry FERC will explore “whether existing rules, regulations, tariffs or industry practices” within its jurisdiction “hinder reliable and efficient integration of VERs, resulting in rates that are unjust and unreasonable and/or terms of service that unduly discriminate against” VERs. Solar and wind energy generators, as well as transmission owners, should be particularly interested in this proceeding.

Incentives for Battery Storage Devices

Battery storage is a possible technology solution to variability in electric power output from wind and solar electricity resources. With such storage it may be possible to store excess output for use when weather conditions prevent use of the resource. FERC has determined that battery storage devices proposed for use on the California ISO grid are jurisdictional wholesale transmission facilities that qualify for specific rate incentives (e.g., up to 195 additional basis points in allowed return on investment), subject to the California ISO’s approval of specific battery storage projects in its planning process.

Electricity Market Transparency

In a Notice of Inquiry, FERC seeks comment on whether it should extend Electric Quarterly Report requirements to federally chartered power producers, municipal electric companies, and certain electric cooperatives that are not now subject to such data reporting requirements. FERC also seeks comments on certain refinements to its data reporting rules so as to broaden the amount of publicly available market information.

* * *

For more information on these FERC initiatives, including assistance in filing comments at FERC, please contact:

Jeffrey G. Berman, Of Counsel
Washington
(202) 508-6350
jeff.berman@bryancave.com

Bryan E. Keyt, Partner
Chicago
(312) 602-5036
bryan.keyt@bryancave.com

Diana M. Vuylsteke, Partner
St. Louis
(314) 259-2543
dmvuylsteke@bryancave.com

Thor W. Ketzback, Counsel
Chicago
(312) 602-5111
thor.ketzback@bryancave.com

James P. Pryde, Partner
Kansas City
(816) 374-3205
jppryde@bryancave.com

Charles A. Zielinski, Counsel
Washington
(202) 508-6157
charles.zielinski@bryancave.com