

# Energy Policy Update

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Welcome to Constellation's Energy Policy Update. This publication is designed to provide Constellation customers and channel partners with an overview of recent and relevant regulatory and legislative matters affecting competitive energy markets.

Since the inception of retail competition in California in 1995, Constellation has been an active participant in regulatory and legislative matters affecting the development of competition, competitive markets, and customer choice.

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## Report: Administration Can Use Executive Authority to Address Climate Change

On 1/21, former Colorado Gov. Bill Ritter released a report, *Powering Forward*, offering ideas on how President Obama can address climate change and energy policy issues over the next three years using his executive powers – without the need for congressional action. The report was developed over eight months with input from CEOs, energy experts, academicians and thought leaders. The report recognizes that states and localities have most of the legal authorities to help the nation make the transition to a cheaper, cleaner and more reliable energy future, but also recognizes that there are steps the federal government can take to help states, from technical and financial assistance to regulatory reforms.

Among the recommendations, the report urges the President to: (1) direct the EPA to issue clear preliminary guidance to states as early as possible in the regulatory process to encourage early adoption of new energy efficiency and renewable energy measures, and to explain how they will be credited in state implementation plans to reduce greenhouse gas emissions from existing fossil-fuel power plants; (2) direct federal agencies to work with the nation's electric utilities and utility regulators to update regulations that are getting in the way of clean energy technologies; (3) request that the IRS use its existing authorities where possible to issue rulings and interpretations of the tax code that increase incentives for private investors to capitalize clean energy technologies; and (4) issue even more aggressive goals for the government's use of third-party financing for energy efficiency and renewable energy improvements in federal operations. The Administration includes nuclear and 'clean coal' in its definition of 'clean energy'.



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## DOE Clears FutureGen Approval

The Department of Energy cleared its final administrative hurdle before formally approving \$1 billion for the FutureGen 2.0 carbon capture project. DOE posted the Record of Decision for the project on its website, clearing the way for the Federal government's \$1 billion payment to the FutureGen Alliance. The revised FutureGen 2.0 project is still waiting for a key approval from EPA to be able to inject and store captured carbon underground.

## Senate Banking Subcommittee Hearing on Banks' Role in Owning Physical Commodities

The Senate Banking Committee's Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled "Regulating Financial Holding Companies and Physical Commodities." Officials from the Federal Reserve, the CFTC, and FERC all testified at the hearing. The hearing comes on the heels of an Advance Notice of Proposed Rulemaking (ANPR) put out by the Federal Reserve Board of Governors that is seeking comments on whether additional restrictions would help ensure that physical commodities activities authorized for financial holding companies are conducted in a safe and sound manner that do not pose a threat to financial stability.

## Whitfield EPA Bill Moves Out of Subcommittee

The House Energy and Power Subcommittee voted 18-11 on 1/8 to approve legislation meant to limit EPA GreenHouse Gas (GHG) regulations. Every Republican voted for the bill and they were joined by one Dem-

ocrat in support of the bill.

The bill, written by subcommittee Chairman Ed Whitfield and Sen. Joe Manchin, would repeal EPA's proposed GHG regulations for new sources, limit the strictness of EPA's proposed climate standards for future power plants, and give Congress the final word on the agency's upcoming climate rules for existing plants. It would create additional Clean Air Act requirements that EPA would have to meet when setting emissions limits for future power plants. EPA would have to ensure that any standards it sets for coal have already been achieved for a full year by at least six power plants in the U.S.

The legislation is expected to quickly win approval from the full committee and the House, but it's extremely unlikely it will become law.

## Chamber of Commerce Officially Rolls Out a New Energy Plan for America

The U.S. Chamber of Commerce issued 64 recommendations on 1/9 that it says will help grow the American energy revolution and contribute billions to the nation's economy. The plan, an update from the Chamber's 2008 plan, advocates for a phase out of the renewable PTC, solving the nuclear waste problem, treating nuclear equally in any RPS/CES mandate, and allowing renewable companies and all forms of generation to form tax-advantaged Master Limited Partnerships.

The rollout further underscored the importance of utilizing Energy Savings Performance Contracts (ESPCs) to help Federal agencies achieve their energy intensity and sustainability objectives with no upfront cost to

taxpayers, while simultaneously helping to create thousands of jobs.

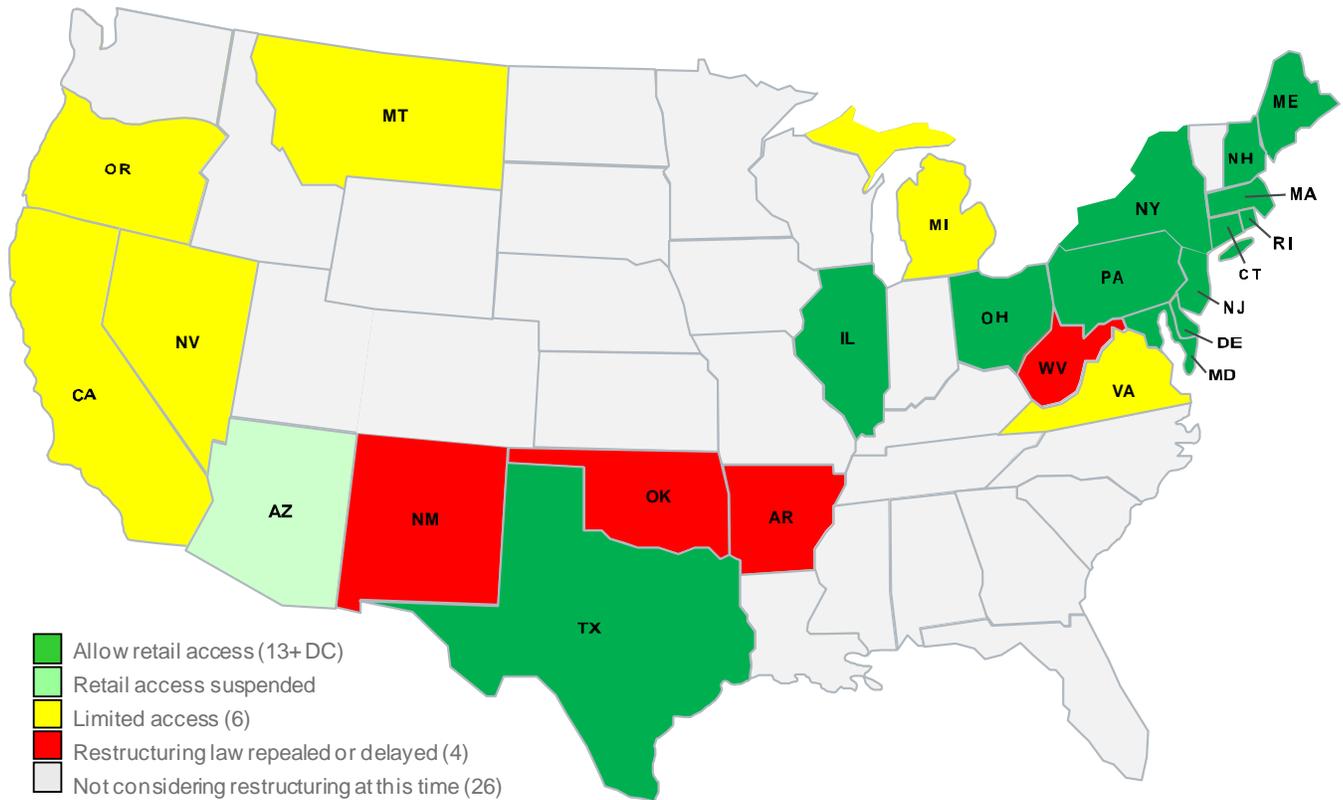
## Congress Passes Omnibus Appropriations Bill

For the first time since 2008, the Congress passed an omnibus appropriations bill, rather than passing a continuing resolution as they have over the past several years. The bill contains a few policy "riders" on energy-related matters. Among other things, it bars the Obama administration until 9/30 from enforcing or setting the rule proposed in November by the Overseas Private Investment Corporation's social policy statement on coal, or from carrying out the Export-Import Bank's 12/12/13 proposed regulation aimed at prohibiting U.S. funding for new coal-fired power abroad. The bill also hits EPA by prohibiting it from establishing greenhouse gas regulations for livestock producers.

The bill gives Energy Secretary Ernest Moniz until 6/30 to submit a "management plan" that assesses the national security demand for tritium and low and highly enriched uranium through 2060, a demand that can only be met with a domestic source. The request is particularly poignant in light of USEC's financial struggles to build its Ohio enrichment project. It also blocks funding for the implementation or enforcement of federal light bulb efficiency standards, which were passed by the Congress in 2007, as well as provides \$10.2 billion for energy programs within the Energy Department over fiscal 2014 and preserves pre-existing funds for Yucca Mountain.

Finally, the bill directs the NRC chairman to have a one-day window to inform other members of the agency leadership, as well as the House and

## Competitive US Retail Electricity Markets



Senate Appropriations panels, the House Energy and Commerce Committee and the Senate Environment and Public Works Committee members of an emergency once it's been declared.

### McConnell Files CRA Challenge to EPA's 111(b) Proposal for New Power Plants

Senate GOP leader Mitch McConnell filed a challenge under the Congressional Review Act (CRA) to EPA's 111(b) proposal for new power plants. CRA challenges are typically levied against rules once they become final, but McConnell is moving against a rule that was only proposed last month, arguing that the rule is already wielding an impact on

anyone considering building a power plant.

Even if McConnell is successful in getting a vote on the CRA, President Obama would certainly veto the resolution if it passes, and Republicans wouldn't have the votes to override him. But in the meantime, Democrats facing tight reelection fights would have to vote for or against the proposed rule for new power plants. Some of those Democrats have already been trying to distance themselves from Obama's environmental agenda.

## STATE UPDATES

### ► ABACCUS REPORT

#### 2014 ABACCUS Report: Texas Retains Top Ranking

On 1/22, the Annual Baseline Assessment of Choice in Canada and the United States (ABACCUS) was released. The ABACCUS Report is a scorecard that ranks progress of U.S. states and Canadian provinces to open the electric sector to market forces and to increase consumer choice. Texas remained the top ranked state from both a residential and non-residential perspective. Other findings included: (1) 17.2 million households in North America have shopped for electricity

savings out of 48 million eligible residential accounts; (2) there is increasing diversity of product offerings, an indication of robust competition; (3) reform of the rules for markets have benefited market development, with increased entry of new suppliers, new products and services and clearer pathways to choice; and (4) with increased offerings of distributed generation and energy efficiency, there is greater pressure on companies that focus solely on commodity sales.

## ► ARIZONA

### Arizona Legislative Session

State Senator Steve Pierce (R-Prescott) has filed a bill that is a potential vehicle to repeal the electric market restructuring statute.

## ► NEW ENGLAND

### NESCOE Seeks ISO-NE Support for Electric Transmission and Natural Gas Delivery Initiatives

On 1/22, the New England States Committee on Electricity (NESCOE) sent a letter to the ISO New England requesting support to facilitate regional infrastructure development. In particular, NESCOE states agreement has been reached by the governors to conduct at least one solicitation to “enable delivery of at least 1,200 MW and as much as 3,600 MW of clean energy into the New England electric system from no and/or low carbon emissions resources . . . The States agree that the costs of transmission infrastructure would be recovered through the ISO-NE tariff or through merchant project (s) in a manner that ensures that the benefits and costs of transmission investments are shared appropriately among the New England States.”

For natural gas, NESCOE would like ISO support for “The approval by FERC of a tariff for the recovery of the cost of firm natural gas pipeline capacity, in a manner that is effective to achieve the construction of new, or expansion of existing, pipelines.” The States hope to increase gas transportation into New England of “1000 mmcf/day above 2013 levels or, 600mmcf/day beyond what has already been announced for the AIM and CT expansion projects” for delivery no later than the winter of 2017/2018.

NESCOE says there is broad agreement from the governors that the costs of the new pipelines should be recovered through the Regional Network Services rate, i.e., through the regional electric transmission tariff. The letter goes on to say, “NESCOE does not have a single preferred mechanism for securing pipeline capacity under the requested tariff, but the New England States agree that they will work with ISO-NE and NEPOOL participants to develop and support, and take whatever steps are necessary and appropriate to facilitate, a structure that will ensure that the capacity obtained with the support of the postulated ISO-NE tariff will be made available in a manner that primarily benefits electricity customers in the ISO-NE market.”

While this was a bold announcement, there are significant obstacles that will first have to be addressed.

## ► CONNECTICUT

### Suppliers and OCC Address Discovery Disputes in Retail Markets Investigation

The Connecticut Public Utility Regulatory Authority is moving ahead with a broad rulemaking investigation of Connecticut’s retail electricity markets.

## Department of Energy and Environmental Protection Commissioner to Step Down 2/3

Dan Esty, the Commissioner of the Connecticut Department of Energy and Environmental Protection (DEEP), submitted to Governor Dan Malloy his resignation effective 2/3. Esty served as Connecticut’s first DEEP Commissioner, combining energy and environmental regulation into a single agency, developing the first state integrated resource plan and re-shaping Connecticut’s energy policy to promote an extensive development effort for clean energy resources. A Yale professor, Esty has been on academic leave for three years in order to serve as DEEP Commissioner and has announced he will be returning to Yale upon his departure from State government.

## ► CALIFORNIA

### Impact of SONGS Related Costs on Direct Access Customers

As the California Public Utilities Commission (CPUC) begins issuing orders on how various costs related to the outage and now closure of the San Onofre Nuclear Generating Station (SONGS) will be recovered, there are issues of how the portion of these costs that are owed by retail choice customers in California will be collected in a manner that ensures that both retail choice and bundled customers rates for these costs are assessed in a symmetrical manner.

This is important because utility generation costs that are imposed on retail choice customers in California are generally collected from them through a non-bypassable charge that is calculated on an annual basis with no true up. As a result, there could be a significant lag between the time that costs or refunds are

moved into bundled customer rates, and whether and when the portion of those costs owed by retail choice customers show up in their non-bypassable charge. This rate timing mismatch can create situation where retail choice customers perceive that utility service is more attractive than retail choice simply because, for instance, bundled customers get a refund in their rates before retail choice customer see the refund in their non-bypassable charge.

Utility and retail choice representatives have worked together to prepare a settlement protocol to submit to the CPUC to ensure modifications to the calculation of the non-bypassable charge that will preclude this outcome.

### Resignation of California Commissioner

California Public Utilities Commissioner Mark Ferron has resigned due to health issues. No replacement has yet been named. Commissioner Ferron was most active in overseeing the implementation of California's 33% Renewable Portfolio Standard, and improving coordination on reliability issues with other California energy agencies.

### ► KANSAS

#### Kansas RPS Debate Heats Up

On 1/23, the Wind Coalition and the Climate & Energy Project released polling data that shows that 91% of Kansans support using renewable energy. In addition, two-thirds would be supportive of increasing the RPS to 25%, even if it means an increase in their bill of \$1-\$2 a month. The poll was conducted by North Star Opinion Research, which is a Republican-oriented firm based in Alexandria, VA

The Wind Coalition, Wind Energy Companies, NextEra, Sprint, and Siemens are actively working to maintain or increase the RPS standard. Kansas Chamber of Commerce, Kansas Policy Institute, Heartland Institute, Americans for Prosperity, and Koch Industries are actively working to repeal or cap the state's RPS. Both the Speaker of the KS House and President of the KS Senate have been critical of the RPS mandate. Kansas Governor Brownback has, in the past, been supportive of wind but there is concern from the wind industry that he may be weakening his stance.

### ► MASSACHUSETTS

#### Cape Wind Faces New Legal Challenge

On 1/22, opponents of the Cape Wind project filed suit in Federal Court alleging the state discriminated against out-of-state power companies with lower costs by pressuring NSTAR to buy power from an in-state company, Cape Wind. The suit raises

claims similar to those upheld in Maryland and New Jersey, alleging commerce clause violations and illegal regulation of wholesale electricity sales. In particular, the plaintiffs take aim at the State's imposition of a merger condition requiring NStar to purchase power from Cape Wind.

Cape Wind is a 420 MW offshore wind project currently under construction with long-term, above-market power purchase agreements mandated and approved by Massachusetts.

### DPU Opens Investigation of Time Varying Rates

On 1/23 the Massachusetts Department of Public Utilities issued an order opening investigation and soliciting comments on time varying rates. The order stems from a grid modernization proceeding conducted last year and specifically asks parties to address questions around implementation of time varying rates for Basic Service customers – which represents the utility price to beat.

### Governor Patrick Announces Spending Plans to Guard Against Risks of Global Warming

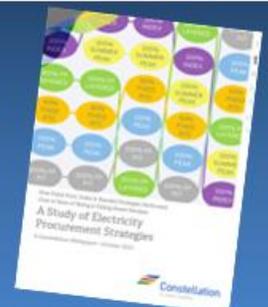
On 1/15, Governor Patrick held a press conference to announce plans to expend \$50 million in funds collected through the renewable portfolio program as alternate compliance payments to address the risks of

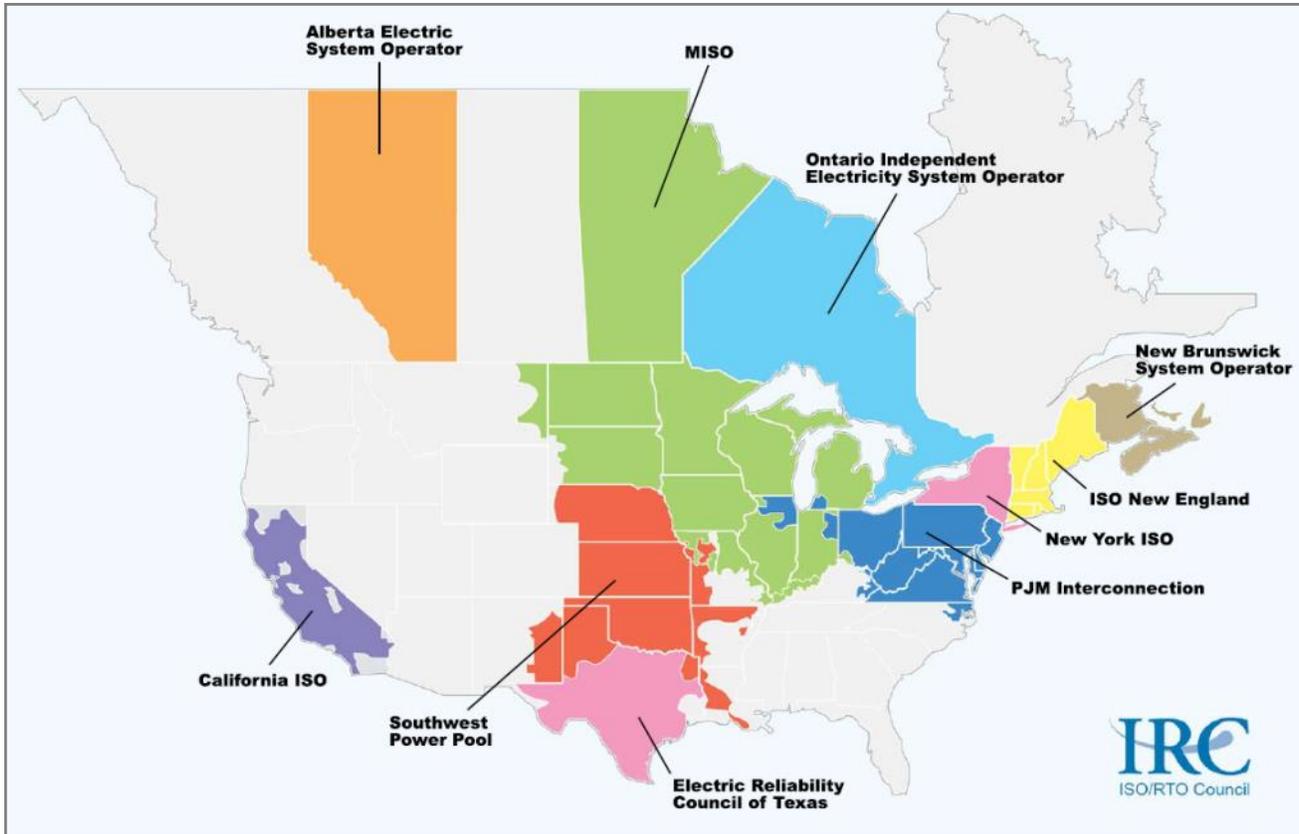
## A Study of Electricity Procurement Strategies

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global warming. The funds will mainly flow to towns and municipalities for development of micro-grids, the construction of sea walls and the hardening of energy infrastructure against storm surges.

**▶ NEW HAMPSHIRE**

**House Adopts Transmission Siting Bill to Encourage Undergrounding of Elective Transmission Lines**

On 1/22, the New Hampshire House voted 171-139 to adopt House Bill 569, which amends the siting process by creating a preference for undergrounding elective transmission lines in excess of 50 feet. The bill was hotly debated on the House floor after two failed motions to table. A long way from passage (it must still go to another House Committee, possibly back to the floor, over to the

Senate and ultimately to the Governor), the vote nonetheless represents a victory for opponents of the Northern Pass Transmission Project, demonstrating the depth of the grass roots opposition to the project which persists.

**Suppliers and Utilities Near Settlement in Retail Dockets**

On 1/13, the New Hampshire Public Utilities Commission (PUC) held a technical conference in Docket 12-295 to address the establishment of temporary rates for Public Service Company of New Hampshire (PSNH) in connection with its fees for processing customer switches, consolidated billing and collection services. In an order issued on 12/13/13, the PUC directed PSNH file a cost of service study to support its charges and convened a technical

conference to establish temporary rates pending the next full rate case.

As a result of that conference it appears the parties are close to a settlement that would cut the switching charge from \$5.00 to \$0.15 per transaction, would drop the billing charge from \$0.50 to \$0.26. Additionally, on 1/15 the PUC also convened a technical conference in Docket 13-244, which was opened to address the hierarchy of payments to suppliers and the distribution company from receipts under consolidated billing.

**Lawmakers Focus on Natural Gas Dependency**

Increased reliance on natural gas was the topic before New Hampshire lawmakers at two recent events. On 1/10, representatives from Public

Service of New Hampshire (PSNH) and Constellation addressed a legislative symposium sponsored by the Nashua Chamber of Commerce and, on 1/14, Constellation also presented to the House Science, Energy and Technology Committee.

While PSNH attempted to portray increased reliance on natural gas as an immediate crisis, Constellation explained to the audiences that there is no immediate reliability crisis and that rather than focus on PSNH's existing coal plant or its proposed Northern Pass transmission line as a fix, lawmakers should allow the market to find the least cost solution for the region's long term reliability needs. Whether PSNH should divest its regulated generation is expected to be taken up by lawmakers in New Hampshire again this year and the issue of fuel diversity and reliability will be on the minds of lawmakers as they debate divestiture.

### **Congressional Delegation Sends Letter to DOE on Northern Pass**

On 1/13, New Hampshire's congressional delegation sent a joint letter to the DOE calling on the agency to "provide the public with a preliminary report detailing which alternative routes will be studied" as part of the future Environmental Impact Study (EIS) that is currently being drafted for the proposed Northern Pass project. The letter from U.S. Senators Jeanne Shaheen (D-NH) and Kelly Ayotte (R-NH) and Congresswomen Carol Shea-Porter (NH-01) and Annie Kuster (NH-02) reiterates a request the delegation made in August to Energy Secretary Ernest Moniz to allow the New Hampshire public a reasonable opportunity to raise concerns on the Northern Pass Transmission proposal.

While the letter itself may have only a limited impact on the federal permitting process it reflects a strong sentiment among Granite Staters that the proposed merchant transmission line should be placed underground.

### **► NEW JERSEY**

#### **Governor Signs Telemarketing Legislation**

The Governor has signed legislation banning energy suppliers from providing false and misleading claims and from telemarketing to residential customers that are on the DO NOT CALL list. The bill sponsor was unaware that energy suppliers were already prohibited from calling customers on the Do Not Call list, but she needed to pass the (useless) bill anyway for political reasons.

#### **Governor Signs Bill to Create Shopping Website**

In an effort to mirror Pennsylvania's PA Powerswitch website, the Board of Public Utilities (BPU) sought authority through legislation to require suppliers marketing to residential customers to provide pricing data to support the creation of a retail electricity shopping website.

#### **Governor Selects New BPU President**

Gov. Christie named Commissioner Dianne Solomon, the wife of former BPU president Lee Solomon, to take over as President of the regulatory agency. Solomon replaces Bob Hanna, who was confirmed as a judge in the Superior Court earlier this week. Since joining the commission

in June 2013, Solomon has spoken relatively little on issues that have come up before the agency in its monthly meetings. Prior to her nomination, Solomon served as commissioner with the South Jersey Transportation Authority.

### **Capacity Planning Bill Vetoed**

Governor Christie vetoed legislation that would have required the State's Energy Master Plan (EMP) include an analysis of the adequacy of generation capacity in the state and for a special committee to make recommendations regarding any policies needed to achieve capacity goals. This bill originally contained language requiring an "Integrated Resource Plan" for capacity, but we were successful in amending the bill to delete that requirement. While the bill was defanged, this veto is an even better outcome.

### **► NEW YORK**

#### **Governor Cuomo Delivers 2014 Budget Proposals**

Governor Cuomo delivered his proposed 2014 fiscal year budget on 1/21. Key items of note and associated budgeted dollars included elimination of the 18-A temporary utility assessment (\$400 million), corporate tax reform (\$200 million), establishment of NY Prize Micro grid Competition (\$40 million), equipping gasoline stations with back-up power (\$17 million), creation of a new Long Island Public Service Commission Office (\$5 million), and introduction of the Renewable Heat Program, and Community Solar NY Program through New York State Energy Research and Development Authority funding. The Legislature will now meet with the Governor's Office over

the next three months to finalize the budget. It is expected to be completed by the end of March 2014.

## New York Public Service Commission

PSC Chairwoman Audrey Zibelman announced the following changes at the Commission:

**Jeff Cohen**, Deputy of Policy and Legal Affairs, will be taking a senior level position at the New York Power Authority,

**Judy Lee**, former Administrative Law Judge, will become Executive Deputy of all PSC Department Management,

**Peter McGowan**, will become the Chief Policy Advisor and work directly with the Chair and Commissioners,

**Kim Harriman** will replace Mr. McGowan and become Acting General Counsel,

**Michael Corson** will become Director, Agency and Government Affairs and manage the external affairs of the Commission, and

Creation of a new position, Deputy of Markets and Regulatory Innovation. This position is currently vacant with a search pending.

It is expected these announced changes will align key departments as the new Chair implements her planned Utility 2.0 restructuring during the 2014 calendar year.

## Rochester Transmission Project

Rochester Gas & Electric (RG&E) filed a delay notice in the Rochester Transmission Project proceeding on 1/15. They indicated they will not pro-

vide its alternative site evaluation for distribution and review until at least 1/19. The alternate site evaluation is necessary to continue to move the Certificate of Public Need (CPCN) process forward and provide the authorization for RG&E to begin construction of the transmission upgrade.

## ▶ OHIO

### PUCO Enters Order on Rehearing in AEP Auction Proceeding

On 1/23, the Public Utilities Commission of Ohio issued an Order denying

all rehearing requests filed in AEP's Auction Process. Importantly, the PUCO addressed a clarification sought by Exelon Generation and others that winning auction suppliers would not be required to procure capacity under the energy-only auctions and that Standard Service Offer customers will receive capacity that is procured by AEP.

The capacity will be priced at \$188.88/MW-day charge as decided by the PUCO in the Orders regarding AEP's Electric Security Plan II and related Capacity Charge proceeding.



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## Statewide Economic Development Rider Legislation Heard

A hearing was held this on HB 312 which would allow for the creation of a statewide rider on electricity bills to subsidize large economic development projects. The bill is sponsored by Rep. Terry Johnson (R-McDermott) and is intended to support a proposed steel mill development along the Ohio River in Scioto County. The bill would allow utilities to recover the costs of reduced price of electricity for the proposed mill (or other economic development project) from electricity consumers across the state, rather than just from the operating territory of the utility, as allowed in current law. A similar proposal was included in Gov. John Kasich's executive budget last year, but was removed by the legislature. Prospects for the bill's passage are uncertain at this point.

## 2nd Senate Hearing on Repeal of Renewables Mandate

The Senate Public Utilities Committee held its second hearing on legislation (SB 34) that would repeal the requirement that 25% of retail power supplies come from advanced and renewable energy resources by 2025. The Committee's Chairman is working to advance the bill as retribution against the renewable industry for their opposition to his legislation to curb energy efficiency mandates. The bill is not likely to become law. Testimony was heard from stakeholders in favor of the repeal.

## OH PUC Chairman to Step Down

Public Utilities Commission of Ohio Chairman Todd Snitchler announced 1/14 that he would not seek reap-

pointment to the position when his term ends in April. The chairman, a former lawmaker appointed by Gov. John Kasich in 2011, said after five years he simply felt it was time to transition back to the private sector. Applications (27 were filed) are vetted by the PUCO's Nominating Council, which recommends four finalists to the governor for consideration.

## PUCO Approves Vectren SCO Auction Results

On 1/15, the Public Utilities Commission of Ohio approved the results of the Vectren of Ohio standard choice offer (SCO) auction. The recent auction of natural gas supply for Vectren's non-choice customers resulted in a retail adjustment of \$1.05 per Mcf which, combined with the NYMEX month-end settlement price, reflects the natural gas supply rate to be charged to SCO customers for the one year period beginning 4/1. The names of the five winning bidders will be publicly released 15 days following the auction.

## Ohio Supreme Court To Hear Constitutional Challenge To In-State Renewable Energy Law

In the wake of the stalled SB58, the RPS reform bill proffered by Senator Seitz, Union Neighbors United has appealed an Ohio Power Siting Board (OPSB) decision allowing Champaign Wind LLC to construct a 140 megawatt wind farm in Champaign County, arguing that the order is based on an unconstitutional law. OPSB appeals go directly to the Ohio Supreme Court, which must hear the case.

The Plaintiffs argument hinges on the fact that the OPSB should not have permitted the wind farm because

they relied on the in-state mandate as being a reason why it serves the public interest. The OPSB decision specifically cites the in-state renewable energy requirement of the current RPS law as one of the reasons the wind farm was deemed to be in the public's interest. Thus, if the OPSB relied on an unconstitutional provision, then it cannot be in the public interest. Because the Ohio statute discriminates against out-of-state renewable energy sources in favor of in-state sources, the plaintiffs argue the law is in violation of the Commerce Clause.

Many states around the country had similar laws granting preference to in-state facilities and none of them have been ruled unconstitutional. Senator Seitz is said to be contemplating filing an amicus brief in the Champaign Wind case.

## PUCO Staff Files Report in Retail Market Investigation (RMI)

On 1/16, the Staff of the Public Utilities Commission of Ohio (PUCO) released a Report and Work plan outlining recommendations as part of the year-long RMI. The Report does not recommend any fundamental changes to the current structure of default service - the so called "Standard Service Offer" - and concluded that the current use of the descending clock auction structure is providing benefits of lower priced power to consumers.

Among Staff's recommendations are: (1) retail supplier customer count and load share should be made public; (2) the Commission should order all electric utilities that currently do not offer a purchase of receivables program to have one fully implemented within 2 years; (3) various changes to the utility bill, including inclusion of the supplier logo and

enhanced Price to Compare information; (4) that the Ohio EDI Working Group provide, within six months, an operational plan to put a Seamless Move process into effect; and (5) each electric distribution Utility (EDU) be required to submit a proposal to Staff within three months of a Commission Order in the retail work plan case on how it will allow customers to register online without an account number in order to access their account information, while ensuring customer protections. While the RMI was limited to electricity, Staff believes similar bill format recommendations should be considered for the natural gas retail market.

If the PUCO endorses the Staff recommendations, these retail market enhancements will facilitate the continued development and expansion of the Mass Market segment of the Ohio market and bring a higher degree of uniformity across the 4 major EDU service territories.

## ► PENNSYLVANIA

### **Governor's Energy "Plan" Unveiled**

Governor Tom Corbett released his energy "plan" entitled "Energy = Jobs" this week. The document focuses substantially on the Governor's view of Pennsylvania as an energy leader (home of the second largest energy field in the world) noting his support of an "all of an all of the above" energy strategy that is grounded in his belief in free markets.

While the report is supportive of competitive markets and nuclear energy, it offers no significant recommendations or policy changes other than a continuation of the existing policies.

### **Policy Committee Discusses Competitive Markets**

The House Democratic Policy Committee held a hearing that was billed as an examination of electric competition in Pennsylvania, but its true purpose was to provide a forum for critics of Senator Mensch's retail auction legislation (SB 1121) to vent their case against the bill. While the Committee made an effort to at least appear to host a balanced group of panelists, the majority of the panelists expressed opposition. Opposition panelists included the PA Consumer Advocate, the PA Small Business Advocate, and representatives from AARP, IBEW, the PA Utility Law Project, IECPA/Alcoa, Noble Energy, and DTE Energy. Panelists in favor of the bill included representatives from RESA, Direct Energy and IGS.

Public Utility Commissioner Gladys Brown closed the hearing with testimony on the PUC's education initiatives and stated the PUC is still analyzing the legislation and hasn't taken an official position, however her body language was clearly expressing opposition. The members of the Committee seemed most concerned about consumer protection issues such as early termination charges, future higher prices to cover the cost of proposed customer acquisition and consumer education fees, and the fact that customers will be effectively "slammed" to a supplier other than the local utility. Many were questioning if this legislation was a solution in search of a problem. As this was just a Policy Committee meeting, there was no action taken on the bill.

### **Demand Response Bill Clears House Committee**

The House Environmental Resources and Energy Committee passed legislation that would require diesel generators participating in Emergency

Demand Response programs to register with the PA Department of Environmental Protection (DEP) every two years, effective 2014, and report on information deemed necessary by the DEP. The amended bill protects proprietary information with a confidentiality clause, imposes penalties for noncompliance, and preserves the PJM blind audit. This bill now heads to the House floor and a vote by the full House is expected the week of 1/27.

## ► TEXAS

### **Governor Appoints New TCEQ Commissioner**

Governor Rick Perry appointed Zak Covar to fill the commissioner vacancy at the Texas Commission on Environmental Quality for a term to expire 8/31/15. Covar, a former Perry aide, was serving as the agency's executive director. Richard Hyde, the former deputy executive director, was named to replace Covar. Hyde is an agency veteran, and has served in deputy director roles with oversight of permitting and registrations as well as compliance and enforcement.

### **Fraser Advocates Peaking Plants for Desalination**

State Senator Troy Fraser (R-Horseshoe Bay) told Texas media outlets that new peaking units built to power desalination plants could help solve the state's resource adequacy issue. Fraser, Chairman of the Senate Committee on Natural Resources, for years has sought to tie power plant and desalination plant construction together as a way to solve projected electricity and water shortages, but has found little interest among merchant generators. Fraser has been a leading op-

ponent of a shift to a forward capacity market, and now appears to be focused on encouraging entities like CPS Energy (San Antonio) and the Lower Colorado River Authority to explore building peakers primarily for desalination, but also to provide back-stop generation in times of high electricity demand.

## FEDERAL UPDATES

### ► PJM

#### Energy Offer Cap Waiver

On 1/23, PJM filed at the FERC seeking two tariff waivers that would temporarily lift the \$1,000/MWh system offer cap rule as applied only to cost-based offers from generation capacity resources. PJM stated that “the basis for such a waiver is documented and widespread escalation of natural gas prices in significant parts of the PJM region to prices.” In the first filing, PJM seeks an immediate waiver (effective 1/24) to make generators whole for their documented costs in excess of the cap via a Balancing Operating Reserves uplift payment. The cost for such uplift will be allocated under current rules that distribute the cost in various ways depending on the reason the unit was dispatched.

However, in this immediate waiver request, PJM would not reflect any above-cap resources in computing energy market clearing prices. PJM requests that the FERC rule on this immediate waiver by 1/24 and that it be in effect from 1/24 until the earlier of (1) 3/31, or (2) the time it is superseded by an order on PJM’s second waiver request.

PJM’s second waiver request is very similar to the first one in that it also

seeks a temporary waiver of the offer cap rule as applied to cost-based offers from generation resources through 3/31. However, the key distinctions in this second request are that in the second waiver request: (1) PJM asks that above-cap resources be eligible to set energy market clearing prices; and (2) PJM asks for a Commission order by 2/10 thereby allowing time to satisfy due process requirements (e.g., comments, protests, etc.). PJM does not propose to modify the offer cap (\$1000 + 2x reserve penalty factor) at this time although it indicates that it plans a stakeholder process to consider a longer term fix. PJM reports that system changes are ready to be implemented.

#### RPM Replacement Capacity Speculation

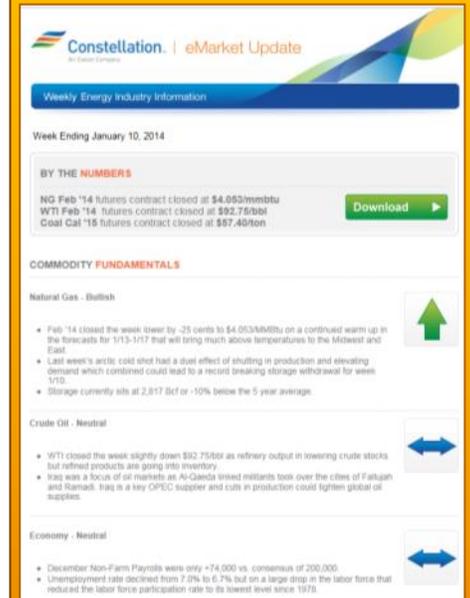
The PJM Capacity Senior Task Force concluded deliberations regarding reform packages intended to stem speculative activity between the Base Residual Auction and Incremental Auctions. The task force will engage in online polling regarding five reform packages. While each proposal provides some remedy to particular avenues for undue speculation, all have flaws or implementation risk.

### ► MISO

#### PJM/MISO Interregional Planning Study - Project Proposals Update

MISO and PJM have completed preliminary evaluation of the 75 project proposals submitted under the joint interregional planning study and found 21 projects show benefits for both MISO and PJM. MISO and PJM will continue to evaluate the 21 projects that show benefits to both re-

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The screenshot shows the top portion of an email newsletter. At the top is the Constellation logo and 'eMarket Update' branding. Below that is a header for 'Weekly Energy Industry Information' for the week ending January 10, 2014. A section titled 'BY THE NUMBERS' lists key market data: NG Feb '14 futures contract closed at \$4.863/MMBtu, WTI Feb '14 futures contract closed at \$92.75/bbl, and Coal Cal '15 futures contract closed at \$87.48/ton. A 'Download' button is visible. Below this is a 'COMMODITY FUNDAMENTALS' section with three categories: Natural Gas - Bullish (with an upward arrow icon), Crude Oil - Neutral (with a double-headed arrow icon), and Economy - Neutral (with a double-headed arrow icon). Each category has a brief summary of market events.

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gions and refine proposals as necessary. The evaluation should be complete by June and the RTOs now anticipate that a decision on which project, if any, will be accepted should be made no later than November 2014 (this is about 5 months later than originally planned by the RTOs).

### **MISO OMS Resource Adequacy Survey Update**

MISO is continuing to verify, and refine if necessary, the preliminary results of the Organization of MISO States (OMS) survey on resource adequacy. The preliminary survey results showed about a 7.5 GW shortfall in MISO North. MISO CEO John Bear sent letters to the CEOs of all companies who participated in the survey so they could review the MISO overall resource position as well as the information specific to their company. Zonal results are expected in February.

### **▶ ERCOT**

#### **Resource Adequacy**

ERCOT released a preliminary forecast of load for the next three years. This preliminary forecast is based on premise counts instead of the economic data on which previous forecasts have been based. Prior forecasts showed annual load growth in the 2.5% - 1.7% range, while the new forecast shows annual load growth of only 1.3%. When the preliminary load forecast data is input into the last published Capacity Demand and Reserves (CDR) report, ERCOT shows reserve margins of 13.75% for 2014, which then rise to over 15% for the next two years. This implies that ERCOT has sufficient reserves until at least 2017. ERCOT will be holding a

workshop to review the load forecast methodology on 1/27.

#### **Wind Capacity**

ERCOT announced that the pool has exceeded 11,250 MW of installed wind capacity. In addition, ERCOT has received the following three signed Generation Interconnection Agreements for an additional 661 MW of wind capacity: Spinning Spur Wind III in Oldham County - 161 MW; Green Pastures in Knox County - 300 MW; Logan's Gap 1 in Comanche County - 200 MW.

### **▶ SPP**

#### **Day-2 Market**

SPP's Change Working Group (CWG) held their final "go/no-go" vote prior to implementation of the Day-2 market. SPP has a few system modifications to implement and test in order to completely bring their systems into compliance with the Day-2 tariff, but these are minor issues that are not expected to delay the market go-live. Market go-live is still expected to occur on 3/1.

#### **SPP-MISO Seam**

SPP's IMM said he saw no system congestion due to the Entergy-MISO merger during the month of December. The Entergy-MISO integration took place on 12/19/13 and the IMM stated that most of the congestion on the SPP system occurred in the first half of December, prior to the merger. While the IMM did caution that flows after the 19th would have been lower due to the holiday season, he did state that they are not seeing the loop flow and congestion that they expected to see yet.

### **▶ CALIFORNIA-WECC**

#### **Energy Imbalance Market Implementation**

PacifiCorp (PAC) held a stakeholder meeting on 1/22 to discuss its proposed tariff language for the Energy Imbalance Market (EIM), a joint effort with the California Independent System Operator (CAISO) to implement real time economic dispatch of resources across both footprints. In preparing the tariff filing, PAC is relaxing its proposal to require resources within its footprint that want to participate in the EIM to hold long term firm transmission.

PAC's tariff filing is now drafted such that resources that actually are dispatched through the EIM will have to pay non-firm hourly firm transmission for the hour in which they have been dispatched. There are still some less than favorable provisions attached to the new proposal, but it is a major step in the right direction. The stakeholder meeting revealed that some stakeholders, most notably load and resources in the Bonneville Power Authority (BPA) territory, continue to have concerns about how the EIM settlement could impact their market operations. At this time, it does not appear that these concerns threaten the EIM go live date in October 2014.

#### **Energy Imbalance Market Governance Issues**

Stakeholder sectors have been formed from which a Transitional Advisory Committee will be established to work with the CAISO Board of Governors on final implementation of the EIM with PAC and on the development of a permanent EIM governance structure. Each sector will be responsible for providing to the

CAISO Board of Governors nominees to the Transitional Advisory Committee, and for providing a ranking of all the nominees that are eventually submitted. Under the protocol established for the formation of the Transitional Advisory Committee, the Board of Governors is not obligated to accept any recommendations made by the sector representatives.

## ► CAISO

### Renewable Energy/Emission Reduction

Five of the major California electric utilities (Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, Los Angeles Department of Water and Power, and Sacramento Municipal Utility District) have commissioned a study by Energy and Environment Economics (E3) investigating a higher renewable standard in California. The study's primary conclusion is that increasing the renewable portfolio standard beyond the current 33% will require significant investment to manage over-generation during daylight hours, and therefore may not be a cost effective way to further reduce emissions in the state.

The Study is expected to spark increased discussion about regulations that will govern emission reductions in the post 2020 time frame.

### Capacity Markets/Resource Adequacy

The CAISO has initiated a stakeholder proceeding to address "Reliability Services." The purpose of the stakeholder process is to review, improve and update the CAISO tariff provisions that govern its backstop pro-

urement of capacity, and the performance obligations of capacity resources.

### CAISO Restatement of Settlements from 2004 through 2009

The Alliance for Retail Energy Markets (AREM) filed a protest at FERC of the CAISO's issuance of price restatements going back to the 2004 through 2009 time frame. The impetus for the restatement is fulfillment by the CAISO of orders from FERC that required the CAISO to recategorize certain transmission constraints in Southern California from local constraints to zonal constraints. The protest challenges the CAISO's authority to impose these new charges and to collect interest on them.

### Long Term Planning

The CPUC and CAISO are currently developing and evaluating new short and long-term resource forecasts to determine the "net short" in advance of competitive solicitation processes. During this new round of the CPUC Long-Term Procurement Proceeding (LTPP) and the CAISO's integrated regional Transmission Planning Process (TPP), the two agencies plan to develop sets of assumptions upon which they will determine the need for new generation (both renewable and conventional) and new transmission lines necessary to meet reliability and other state environmental policy goals. This level of planning coordination is new across the agencies.

## ► ISO-NE

### Forward Capacity Market Demand Curve Discussions

The ISO and the Brattle Group introduced their draft recommendations for a demand curve. The ISO stated that they plan on filing the demand curve with FERC this summer with the expectation of implementation for FCA 10 (2019/2020, Feb. 2016 auction) but did not rule out a FCA 9 implementation. While Brattle has not settled on a proposed shape of the demand curve, they were recommending a flatter tail than PJM's curve.

## ► NYISO

### Shortage Pricing

The Market Issues Working Group met to review and evaluate shortage pricing rules. Shortage pricing rules are implemented in the real time market when the NYISO activates its Emergency Demand Response Program (EDRP) and Special Case Resource (SCR) program. The programs were activated 5 days in the Summer 2013. The scarcity pricing mechanism reflected the \$500/MWh cost to provide these EDRP/SCR resources, but only in locations that met a "but for" test (where NYISO would not have met reserves requirements in those locations but for these resources).

An issue of concern is the proxy bus pricing which does not currently reflect scarcity pricing when scarcity pricing is activated. Additionally, the NYISO is also considering the implementation of a loss of load probability demand curve, which would set scarcity prices based on loss of load costs as reserves are depleted. These issues will be discussed in the ongoing stakeholder process.



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## Contact Constellation

If you have any questions or inquiries, please contact your Business Development Manager directly or one of the numbers listed below.

### Customer Care

888.635.0827

### Government, Regulatory Affairs & Public Policy

David Fein

VP, State Government Affairs –East

Exelon Corporation

312-394-2116

[david.fein@exeloncorp.com](mailto:david.fein@exeloncorp.com)

### General Questions or Request a Proposal

866.237.7693

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