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Electric Power Daily

Wednesday, February 3, 2010

Obama says Senate could split energy and climate bills

President Barack Obama said Tuesday that he would be open to the possibility of the Senate passing an energy bill without a carbon dioxide cap-and-trade program; although he said he would still prefer comprehensive energy legislation including a cap on greenhouse gasses.

The comments put him at odds with Senate Democratic leaders who have insisted that an energy bill, already passed out of a major committee, be combined with a climate change bill still being negotiated. Obama spoke at a town hall event where a questioner asked him why there is not more being done to push energy efficiency and whether or not an energy bill should be done before a climate bill.

"We may be able to separate these things [energy and climate bills] out and it's conceivable that's where the Senate ends up," Obama said in Nashua, New Hampshire.

He added that a cap-and-trade program was still the best way to provide incentives for clean energy other than mandates and tax breaks.

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Entergy Q4 earnings rise to $314 million on sales, rates

Entergy Corp. on Tuesday posted fourth-quarter earnings of $313.8 million, or $1.64/share, compared with earnings of $170.6 million, or 89 cents/share, in the same period last in 2008. The company's quarterly revenue fell to $2.499 billion in 2009 from $3.001 billion in 2008's fourth quarter.

Entergy said that it had 11 cents/share in unspecified special charges in the three months ended December 31, including 6 cents/share in charges related to its Entergy Nuclear subsidiary and 5 cents/share related to its utility and parent units.

In the fourth quarter of 2008, the company took 10 cents/share in charges, including 5 cents/share at its utility and parent units, 4 cents/share at Entergy Nuclear, and 1 cent/share at its Entergy Wholesale Operations unit, which owns and operates non-nuclear independent power plants.

That left Entergy with fourth-quarter operational earnings of $334.9 million, or $1.75/share, compared with operational earnings of $190.7 million, or 99

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New Jersey large users chafe at costs tied to RGGI law

The New Jersey Board of Public Utilities next week will schedule a hearing on a claim by a collection of large energy users that the users are paying a disproportionate share of the cost of utility infrastructure and energy efficiency programs.

The costs of the programs are recovered now based on energy usage. The group of large commercial and industrial users in October asked the board to establish one or more alternative methods of cost recovery that would be less burdensome. Last week the board agreed to hear the users' request.

"The programs will cost billions of dollars with little if any derived benefit to the large users," Steven Goldenberg, attorney for the New Jersey Large Energy Users Coalition, said Tuesday in an interview. The group has about 20 members, but Goldenberg said none of the companies wanted to be named.

The programs at issue have been filed and approved by the BPU under the state's Regional Greenhouse Gas Initiative law. RGGI is a carbon dioxide cap-

Federal Regulation

Commissioner Norris getting up to speed on FERC agenda

With his office nearly fully staffed, newly seated Federal Energy Regulatory Commissioner John Norris is getting up to speed on the agency's agenda.

Although he has a solid base of experience in utility regulation, having served nearly four years as chairman of the Iowa Utilities Board, Norris has spent the last year away from the energy industry as chief of staff for Agriculture Secretary Tom Vilsack.

During his time at the IUB, which included a stint as president of the Organization of MISO States, Norris played a leading role in areas that figure prominently on the FERC priority list, including: development and allocation of costs for transmission to serve renewable resources, demand response and competitive markets.

"I'm hesitant to give you an issue that I am going to hang my hat on," Norris said during a Monday interview, his first since

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Renewable Power

Utilities seen having renewables financing edge

The financial strength of the nation's largest utilities and their competitive generation affiliates give them a distinct edge in advancing wind farms and other capital-intensive renewable energy projects, particularly in an era of tight credit, financial advisors to the renewables sector said.

Big utilities and their affiliates "have the competitive advantage now" over smaller, independent developers in renewable project financing, said Mohammed Alam, president of Alyra Renewable Energy Finance of Northampton, Massachusetts.

Alam, who among other things has advised Duke Energy on its expansion into the wind business, said that wind and solar projects require large amounts of capital, but utilities and their affiliates typically can finance them "through their balance

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and-trade program among power generators located in 10 Northeast states.

One example of a utility initiative approved under the state law establishing New Jersey's participation in RGGI is Public Service Electric & Gas' "Solar 4 All" program. The utility will invest $515 million to develop 80 MW of solar generation. "The programs were designed to assist rate classes other than large users. They include insulation for houses, and other residential programs. They do not benefit us," Goldenberg said.

The utility initiatives were proposed after then-Governor Jon Corzine said in an address to the Legislature in October 2008 that said programs developed under the state's RGGI law could be used to stimulate the economy and create jobs, Goldenberg said. At a time when utilities were scaling back infrastructure projects, Corzine's proposal allowed the utilities to accelerate the projects instead, he said.

Corzine said that jobs could be created through the utility programs without any cost to the state, Goldenberg said. "But they are being paid for through utility bills. At a time like this, during a recession, if businesses are hurt, then you may create jobs on one side, but lose them on the other side," he said.

The large users are paying millions of dollars in additional energy costs because of the usage charges implemented to pay for the programs, Goldenberg said.

New Jersey has seen businesses go bankrupt, relocate out of state, scale back operations and simply close down, Goldenberg said. The high cost of energy in the state has contributed to the decisions of companies to reduce or abandon their New Jersey operations, he said. "It's a clear pattern that is reflected in the membership of our group. There are economic consequences to what they are doing," he said.

The large users have proposed three possible alternatives to paying for the programs through a current cents-per-kWh usage charge. They include a provision that would allow a large user to opt out of a utility-sponsored program if the user meets certain criteria, a surcharge that decreases as usage increases, or an annual cap on charges paid by large customers.

Another alternative that could be considered is a per-meter approach that would spread the cost of the programs more equally over the total number of meters through a single charge, the users group said.

The alternatives do not seek a blanket exemption for all large customers, but they do seek to establish a more balanced and reasonable approach to funding the programs, the users' petition before the BPU said.

The large users have opposed the usage charge in various settlement negotiations that established the cost recovery for programs approved under RGGI. They also asked that the alternatives be considered during the settlement talks, the petition said. They were not incorporated largely because of concerns that to do so would address matters of policy that could only be decided by the BPU in a separate proceeding, the users' group petition said. — *Mary Powers*

10 senators back bill aimed at plant pollution

Led by Delaware Democrat Tom Carper and Republican Lamar Alexander of Tennessee, 10 senators are backing legislation aimed at reducing coal-fired power plant pollution of sulfur dioxide, nitrogen oxide and mercury nationwide.

Carper and Alexander on Thursday plan to introduce their bill, the Clean Air Act Amendments of 2010, and will hold a news conference. Democrats co-sponsoring the bill are Chuck Schumer of New York, Dianne Feinstein of California, Amy Klobuchar of Minnesota, Jean Shaheen of New Hampshire and Ted Kaufman of Delaware.

In addition to Alexander, Republican cosponsors are Susan Collins of Maine, Judd Gregg of New Hampshire and Lindsey Graham of South Carolina.

Carper and Alexander have introduced bills during previous

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congresses to cut power plant emissions of SO2 and NOx through an emissions allowance market while mercury - -a neurotoxin — was addressed with a set cap.

Carper and Alexander have also sought support in past legislation for adding carbon dioxide emissions to their bills. Carper said last month that he was open to a broader bill but he would begin with these three pollutants, NOx, SO2 and mercury.

Meanwhile Graham is working with Senator John Kerry, a Massachusetts Democrat, and Independent Democrat Joe Lieberman of Connecticut on a bill to set economy-wide carbon targets with a market mechanism to aid compliance. — *Cathy Cash*

Volcker backs Obama plan to curb bank trading

Paul Volcker, former Federal Reserve chairman and now head of the Obama administration's Economic Recovery Advisory Board, on Tuesday sought to untangle some of the concerns raised by President Barack Obama's proposal to prevent large banks from engaging in proprietary trading.

In prepared testimony he planned to give late Tuesday before the Senate Committee on Banking, Housing and Urban Affairs, Volcker said Obama's proposal to curb the proprietary interests of commercial banks will ultimately promote the "competition, innovation and underlying stability that we seek."

Obama on January 21 said he would ask Democratic legislators to amend their financial reform bills to ban large banks from operating proprietary trading desks and from investing in or sponsoring hedge funds.

This raised the possibility that some of these institutions would need to curtail some of their energy trading activities.

Given proper direction from regulators, Volcker said, banking supervisors should be able to distinguish between trades that are undertaken on behalf of clients and those of a proprietary nature.

"[E]very banker I speak with knows very well what 'proprietary trading' means and implies," Volcker's testimony said. "My understanding is that only a handful of large commercial banks — maybe four or five in the United States and perhaps a couple of dozen worldwide — are now engaged in this activity in volume. In the past, they have sometimes explicitly labeled a trading affiliate or division as 'proprietary,' with the connotation that the activity is, or should be, insulated from customer relations."

As many of these banks trade in securities, stocks and bonds, derivatives, commodities and other investments on behalf of customers, "there will be temptations to speculate by aggressive, highly remunerated traders," he said.

When banks trade for their own accounts, they "will almost inevitably" work against the interests of their commercial customers, Volcker said.

" 'Inside' hedge funds and equity funds with outside partners may generate generous fees for the bank without the test of market pricing, and those same 'inside' funds may be favored over outside competition in placing funds for clients," his testimony said. "More generally, proprietary trading activity should not be able to profit from knowledge of customer trades."

Volcker pushed for international consensus on Obama's proposal and said any new regulatory authority should be broad enough to prevent banks from circumventing the law.

"We do not need or want a new breed of bank-based funds that in all but name would function as hedge or equity funds." —*Jessica Marron*

Correction

An article Tuesday about notices of penalty issued by the North American Electric Reliability Corp. misstated the date the penalties were issued. The penalties were issued on December 30, 2009, not January 30. An article on the penalties originally ran in the January 7 issue.

DOE, EPA program to help states on efficiency

Continuing the Obama administration's push on energy efficiency, the Department of Energy and the Environmental Protection Agency on Tuesday created what is to be known as the State Energy Efficiency Action Network.

The network will help states implement energy efficiency improvements in homes, offices, buildings and industry by 2020.

With the network, DOE, EPA and other organizations will assist states with energy-efficiency initiatives, including home retrofits and financing programs.

The network will seek to achieve goals outlined in the National Action Plan for Energy Efficiency five years earlier than originally planned. The plan, developed by a public-private initiative in 2005, includes goals of establishing billing systems that provide consumers with information on their energy use and developing state policies to encourage energy efficiency practices.

The action network's executive group will meet for the first time in early March. — *Herman Wang*

Wisconsin Energy adds to MISO capacity glut

Wisconsin Energy on Tuesday brought online a highly efficient 615-MW coal-fired power unit, adding to a generating glut in the Midwest Independent Transmission System Operator market.

The new Oak Creek unit is one of the top-five most efficient plants in the US and will displace less efficient generating capacity in the MISO market, Gale Klappa, the Milwaukee-based utility company's chairman, president and CEO, told analysts during a conference call.

"Even with the downturn in the economy ... this unit will dispatch more than 50% of the time," Klappa said. In other words, the plant's cost will be below the MISO clearing price at least half the time.

Although the unit south of Milwaukee was designed to be 615 MW, it operated at 622 MW while it was tested and Klappa believes it can deliver "significantly" more than that. A second 615-MW unit is slated to come online by the end of August, Klappa said. Madison Gas & Electric, based in Madison, Wisconsin, and WPPI Energy, a wholesale power provider based in Sun Prairie, Wisconsin, own 15% of the Oak Creek plant.

With the new unit online, Wisconsin Energy is looking to expand its wholesale power business by adding short-term and long-term contracts, Klappa said.

About a year and half ago, Wisconsin Energy completed a 1,090-MW natural gas power plant in Port Washington, Wisconsin. The plant is also one of the most efficient in MISO, Klappa noted.

Although the Wisconsin Public Service Commission is investigating the possible need for Wisconsin utilities to close old coal-fired power plants, Klappa does not think any of Wisconsin Energy's plants will be shut early. The utility has already closed 10 coal-fired units and has installed or is installing pollution control equipment at its remaining coal plants, he said. "We are already very far ahead of the curve," he said. "I don't see us as having any significant risk in the next five years."

While the economic downturn has depressed power sales, states like Wisconsin plan to keep electric demand growth down. The Wisconsin Legislature is considering an omnibus energy bill that among other things would set a state goal of reducing energy use by 2% a year starting in 2015, Klappa noted. The bill would also expand Wisconsin's renewable portfolio standard from 10% by 2015 to 25% by 2025.

The bill offers utility companies like Wisconsin Energy a chance to make new investments, Klappa said, noting that the bill would allow utilities to earn a rate of return on their energy efficiency investments.

In the near-term, Wisconsin Energy plans to soon seek PSC approval to build a 50-MW biomass plant for about $250 million. The federal 30% investment tax credit would reduce the utility's investment to $175 million, he said.

Q4 net jumps 18.4%

Meanwhile, Wisconsin Energy fourth-quarter income increased 18.4% to $118.7 million, or $1/share, from $100.4 million, or 85 cents/share, a year ago, driven by cuts in operating expenses and income from discontinued operations, the Milwaukee-based electric and natural gas utility company said Tuesday.

For 2009, Wisconsin Energy income increased to $382.4 million, or $3.24/share, from $359.1 million, or $3.04/share, in 2008.

Fourth-quarter revenue slipped to $1.07 billion, down from $1.2 billion in the fourth quarter of 2008. Meanwhile, 2009 revenue fell to $4.13 billion from $4.43 billion in 2008.

Operating income from Wisconsin Energy's utility subsidiaries inched up $1 million in the quarter to $173 million.

Total fourth-quarter electric sales fell 1.5% to 7.5 million MWh from 7.6 million MWh in the year-ago period. Residential sales fell 1% to 2.1 million MWh in the quarter, small commercial and industrial sells fell 5.2% to 2.1 million MWh and large C&I sales fell 2.5% to 2.4 million MWh. For 2009, total sales fell 8.7% to 29.2 million MWh.

Looking ahead, Wisconsin Energy expects electric sales to increase 1.2% in 2010. When discounting the effect of weather, the company expects sales to fall 0.4% this year, partly because the company forecasts state employment levels to fall another 1.5%.

Wisconsin Energy had about $1.6 billion in available credit facilities that expire in 2011, said Allen Leverett, Wisconsin Energy CFO. The company plans to renew the facilities later this year at different levels, he said.

After earning $3.24/share in 2009, Wisconsin Energy expects to earn $3.65/share to $3.75/share this year, Leverett said. Wisconsin Energy expects to earn about $4/share in 2010, according to Klappa. — *Ethan Howland*

FirstEnergy forecasts rebound for 2010

After a nearly decade-long string of record-setting generation performances was snapped by the economic downturn and unfavorable weather last year, FirstEnergy is forecasting a bounce-back year in 2010.

James Pearson, vice president and treasurer of the Akron, Ohio-based company, told the Credit Suisse Energy Summit in Vail, Colorado, on Tuesday that 2009 clearly was "a depressed year." This year figures to be better.

"We think our residential and commercial load will come back near levels we had in 2008," he said. "Industrial load will be recovering," though not to pre-2009 levels.

The company does not release fourth-quarter earnings until February 23, so statistics for the final three months of last year are not yet available. But in the third quarter, FirstEnergy's industrial sales were down 16%, while commercial and residential sales were off 6% and 8%, respectively, according to company spokeswoman Ellen Raines.

The commercial sector is being counted on by FirstEnergy to lead the recovery, Pearson said, followed closely by the residential class. "We do see some recovery in the steel industry," he added, pointing out that a General Motors plant in Ohio recently reinstated a second production shift.

FirstEnergy believes weather, as opposed to the sluggish economy, was the most important factor in residential use decline.

"Last summer was unusually cool for us, which means we had significantly cooler temperatures in the season when we usually have our highest electricity usage of the year," noted Raines. FirstEnergy is predicting a return to more "normal" weather this year.

Pearson said the company anticipates total generation production to reach 80 million MWh again this year, following a one-year break last year when the company estimates generation was 65.5 million MWh. From 2005 to 2008, FirstEnergy's total annual generation was 80.2 million MWh, 82 million MWh, 81 million MWh and 82.4 million MWh, respectively. The company is looking to rebound to 80.9 million MWh in 2010.

Aside from an economic uptick, FirstEnergy's generation output this year is expected to be aided by an expanding load in the northern Ohio service territory served by its Ohio Edison, Cleveland Electric Illuminating and Toledo Edison subsidiaries. During the company's power procurement auction last May, competitive power affiliate FirstEnergy Solutions won only 51 of the 100 available tranches to serve the nearly 2 million customers.

Since then, FirstEnergy quietly set about purchasing tranches won by other companies and negotiating power supply deals with government aggregators and large commercial and industrial customers. Now, FES controls 84% of the load in northern Ohio, Pearson said.

FirstEnergy's application to conduct a pair of reverse power auctions this year for power deliveries starting in June 2011 in northern Ohio is scheduled for a final ruling this week by the Public Utilities Commission.

Pearson also provided an update on several ongoing or new generation projects. By the end of this year, construction is expected to be completed on the long-delayed, 707-MW Fremont Energy natural gas-fired plant in Ohio. FirstEnergy purchased the unfinished plant from Calpine two years ago and is spending about $180 million to wrap up construction.

Last November, FirstEnergy also acquired the Norton Energy Services compressed air energy storage project under development in Summit County from Haddington Ventures. FirstEnergy said the initial build-out could be 268 MW, with total capacity of 2,700 MW. However, FirstEnergy has no precise timeline for the work.

Altogether, FES operates more than 14,300 MW of generation capacity. FirstEnergy serves more than 4.5 million customers in Ohio, Pennsylvania and New Jersey. *— Bob Matyi*

Entergy CEO admits 'misstep' at Vermont Yankee

Responding to a controversy that has become central to Vermont Yankee's future, Entergy's CEO on Tuesday admitted to a "misstep" that led the company to provide false information about underground pipes that may be linked to radio isotopes found in nearby wells.

During a conference call on fourth-quarter earnings, CEO Wayne Leonard acknowledged the company had given conflicting information over several months to state officials about whether or not the pipes exist. The pipes are important because they may be the source of tritium, a radioactive isotope found above safe threshold levels in a monitoring well near the plant.

Revelations that the pipes exist – and that the company provided contradictory reports of their existence – could jeopardize the future operation of the 650-MW plant, which provides one-third of Vermont's power. The state Public Service Board is requiring that Entergy respond today to a request by the Conservation Law Foundation that Vermont Yankee show cause why it should not be shut down immediately.

Meanwhile, Governor Jim Douglas has called for a slowdown in proceedings underway on Vermont's relicensing and Entergy's proposed spin-off of its nuclear plants into a new company. "Entergy now finds itself under investigation at every level," he said.

Leonard admitted that the turmoil is "of our own making and should never have happened." The company had reported in various forums since the fourth quarter of 2008 both that the pipes did and did not exist, according to Leonard. A December 2008 subcontractor's report said no such pipes were buried near the plant, but at the same time referenced fourteen pages of documentation provided by Entergy "that clearly indicated there were such pipes," he said.

About a month after the report was issued, Entergy submitted a response to a discovery request in a state regulatory proceeding that indicated no such pipes exist. "That response was not accurate. It has been corrected and refiled," he said.

Then in May an Entergy executive testified that he did not believe the pipes existed but would get back to officials with a definitive answer. The executive did not report back to the state. As a result, the employee has been placed on administrative leave pending further investigation, Leonard said.

An independent counsel is now investigating emails, notes, computer files and other records to uncover the source of the discrepancies. "We will be both thorough and fully transparent in our investigation and findings. And we will restore trust and credibility with our stakeholders," Leonard said.

Governor Douglas said last week that the contradictory statements by Entergy created a "breach of trust that cannot be tolerated." He added that he has lost faith in Vermont Yankee's management team and that the "dark clouds of doubt" must be cleared before regulatory decisions can be made about the plant's future.

The state Public Service Board said in a notice posted Friday on its web site that it is "deeply concerned" that under oath Vermont Yankee may have "provided false information for an extended period of time" without making corrections. The board said the finding could influence its decision to extend the plant's certificate of public good and give other approvals that would allow Vermont Yankee to operate beyond March 21, 2012.

Leonard emphasized that the tritium has not been found in drinking water supplies and he defended Vermont Yankee as being among the elite when it comes to operating performance.

Vermont Yankee has offered Vermont utilities a 20-year below market power purchase agreement that Leonard said will save Vermont ratepayers at least $500 million or as much as $800 million over renewable energy. Leonard said he hoped that corrective action and the ongoing investigation will encourage lawmakers and regulators to "look beyond our misstep" and focus on the benefits of receiving the low-cost clean power. *— Lisa Wood*

NERC issues 13 notices of penalty

North American reliability officials on Monday issued 13 notices of penalty to utilities and a system operator for alleged reliability violations, the largest of which was a $250,000 penalty to New York State Electric & Gas for two instances of failing to properly maintain vegetation.

The total amount of penalties issued by the North American Electric Reliability Corp. was nearly $650,000 for the alleged violations, some of which were settlements in which the power system user neither admitted nor denied the infraction, according to NERC filings to the Federal Energy Regulatory Commission.

NERC rated the risk factor of the alleged NYSEG violations as "high" when notifying FERC of the penalty. According to the filing, NYSEG has entered into a settlement agreement with the Northeast Power Coordinating Council neither admitting nor denying the two alleged violations.

NYSEG agreed to the penalty, in addition to other remedies to mitigate the alleged violations and "ensure future compliance" under terms of the settlement agreement. According to NERC, NYSEG on July 18, 2008 self-reported that a 230-kV line between Stolle Road Substation and Meyer Substation sagged into an apple tree in April 2008 causing the line to trip.

Also, on August 15, 2008, NYSEG self-reported that on July 11, 2008 the 345-kV line 33 flashed over or made contact with a 51-foot spruce tree causing an outage that lasted 4 hours and 51 minutes. The utility's own analysis concluded that trees were allowed to remain in the transmission right-of-way near transmission, and the utility's vegetation management program "did not provide adequate training, procedures or tools" for forestry personnel to exercise proper discretion in allowing trees in the right-of-way.

The second largest of the February 1 penalties was $140,000 to Calpine, the result of a June 2008 audit by the SERC Reliability Corp., a NERC regional entity. According to the notice of penalty, SERC alleged that Calpine failed to provide its maintenance and testing intervals or basis and a summary of its maintenance and testing procedures for all eight of its plants located in the SERC region. SERC also alleged that Calpine failed to show that its protection system devices were maintained and tested within the defined intervals and the date each protection system device was last tested and maintained for all eight of its plants located in the SERC region.

Calpine did not admit nor deny the violation but agreed to the settlement, as well as undertook steps to attain compliance with the applicable standard, NERC said. The alleged violations were given a risk factor of "high."

Another notice of penalty was issued for Nebraska Public Power District for $70,000 for a self-reported failure to comply with certain maintenance and testing intervals, as well as a violation for "failure to anticipate tree and conductor movement" that caused an outage during a snow and ice storm in April 2009. NPPD neither admitted nor denied the violation, but agreed to the settlement and penalty, NERC said.

Other notice of penalties announced Monday were issued for California Independent System Operator; Montana Dakota Utilities; Calpine Energy Services; Electric Energy; Farmington Electric Utility System; Overton Power District #5; PSE&G; Puget Sound Energy and Utah Associated Municipal Power Systems. They ranged from $0 to $50,000. *— Jason Fordney*

Oregon wave power developer seeks permit

The developer of an ocean wave power project in Oregon has applied for a 35-year license from the Federal Energy Regulatory Commission.

Under the license, Ocean Power Technologies would install 10 floating "PowerBuoys" with a combined 1.5 MW capacity for its Reedsport OPT Wave Park (Docket No. P-12713).

In its February 1 application, the developer said its long-term plan is to install at least 100 buoys for a 50-MW capacity project. Starting with a license for a smaller-scale build out, however, would "allow the company to conduct studies that the stakeholders believe will be useful in evaluating both the 1.5 MW project as well as the potential impacts of an expanded project," it told FERC.

The Reedsport project would be located in the Pacific Ocean about three miles offshore from Douglas County, Oregon, west of the town of Reedsport.

OPT currently holds a preliminary permit at the site where the smaller project would be built, and also an adjacent area where it envisions expanding the facility. The permit will expire February 16. A preliminary permit does not grant land rights or permission to build. Rather, it holds first place in line for a developer to later seek a license.

So that OPT does not lose priority to pursue a license for a larger project, on February 2 it applied to renew the permit for the site adjacent to the proposed 1.5-MW facility.

OPT in December signed a memorandum of understanding with Oregon that outlined an approach the state and developer would take for developing wave power projects along the state's coastline, including streamlining Oregon's handling of the Reedsport application and for a proposed OPT facility in Coos Bay. *— Esther Whieldon*

Calif. parties in Western energy crisis settlement

A two-part settlement totaling $14.5 million has been reached between the Northern California Power Agency and a number of entities that bought power from it during the Western energy crisis.

The first part of the deal would resolve claims between NCPA and the so-called California parties — Pacific Gas and Electric, San Diego Gas & Electric, Southern California Edison and the state of California — over NCPA's power sales from January 1, 2000, through June 20, 2001.

The second part of the arrangement would settle NCPA's claims that PG&E owes it money for reliability must-run power sales and emergency services agreements made from January 1, 2000, through October 31, 2007. Specifically, PG&E will pay NCPA $2.2 million, said the February 1 filing with the Federal Energy Regulatory Commission (Docket No. EL00-95, *et al.*).

Under the broader settlement (Docket nos. EL03-161 and EL03-196), $12.3 million will be put into an escrow to be distributed among the California parties and any other entities that decide to join the agreement. The funds will be doled out based on an allocation matrix.

Of the $12.3 million, $5.3 million in unpaid receivables, plus $3.7 million in estimated interest, will be released from an escrow maintained by the California Power Exchange. Also, NCPA will make cash payment of $3.3 million.

However, $399,000 of NCPA's unpaid receivables will be held in the CalPX escrow to go toward any future shortfalls FERC may find between the low interest rate the escrow provided and the higher commission-required rate. *— Esther Whieldon*

Cal-ISO postpones 'right of first refusal' decision

The California Independent System Operator has decided not to take a proposal that includes giving utilities the right of first refusal to build new transmission systems in their service areas to its board for approval this month, as had been planned.

Instead, Cal-ISO staff will review its Renewable Energy Transmission Planning Process and seek board approval in March. The delay is being hailed by opponents of the right of first refusal as a sign that Cal-ISO could be reconsidering its plan in the face of vocal opposition from several stakeholders.

"We have concluded that this topic deserves further deliberation and input from stakeholders," said Cal-ISO spokesman Gregg Fishman. "We plan to issue a final draft proposal on February 16, and conduct another stakeholder meeting on February 23. A revision of the timeline should be out at the end of this week."

"This appears to be an indication that the ISO is taking into consideration the intense opposition to giving utilities the right of first refusal and realizes if it goes ahead with it as proposed, it will face further challenges," a market participant said.

Some of those opposing the plan are considering further challenging it if Cal-ISO sends its proposal to the Federal Energy Regulatory Commission for final approval with the right of first refusal clause intact, the market source said.

Gary Ackerman, executive director of the newly formed Western Independent Transmission Group, said Cal-ISO is aware of the "growing army of voices expressing serious concern about the [grid operator]'s proposed transmission process." Ackerman said independent transmission developers contend that the Cal-ISO proposal puts a "serious chill" on any transmission investment in California.

Susan Schneider, a consultant to the California Wind Energy Association, said there are many issues that have garnered opposition or raised questions, including Cal-ISO's proposed handling of transmission plans that were first proposed by independent developers in 2008 and 2009. "There are a lot of unanswered questions in this proposal that need to be addressed," she said.

The California Public Utilities Commission staff wrote Thursday that "CPUC is now prepared to state its clear and unqualified opposition to the inclusion" of a right of first refusal in the proposal. Earlier, CPUC wrote that such a refusal would be like "throwing out the baby with the bathwater" by effectively giving utilities a "cherry picking" opportunity. *— Daniel Guido*

El Paso Electric seeks to halt PRC order

El Paso Electric said Monday that it has asked the New Mexico Supreme Court to set aside a state Public Regulation Commission order.

In a filing with the Securities and Exchange Commission on Monday, El Paso Electric said that on January 26 the PRC issued an order in its investigation into certain franchise fees paid by the utility to the state's Dona Ana and Otero counties.

The PRC decided that the imposition of franchise fees by the counties is not authorized under New Mexico law and, therefore, El Paso Electric cannot pass through to its customers some past and all ongoing franchise fees imposed.

As a result, the PRC directed El Paso Electric to halt passing through any franchise fees and refund customers the $6.7 million charged to customers since June 1, 2004, including interest.

The PRC told the company to refund the fees over a three-year period with a credit on customer bills and file tariffs for refunding within three days.

El Paso Electric last week said that the PRC has granted a request to extend its deadline for compliance until February 12.

The PRC order does not relieve El Paso Electric of its obligation to pay franchise fees to the counties, but says that this issue must be addressed by the New Mexico courts.

El Paso Electric asked the court January 27 to set aside the order on legal and jurisdictional grounds. The company will also ask the court to stay the order pending the appeal, it said.

El Paso Electric has also been informed that the counties intend to pursue their own legal actions opposing the order, it said in the filing. *— Staff Report*

Fitch puts Sempra Energy on negative watch

Fitch Ratings on Tuesday warned that if Sempra Energy keeps the North American portion of its trading joint venture with the Royal Bank of Scotland, this could raise concerns over whether Sempra will have enough liquidity and capital to collateralize its trading books.

The ratings agency said it has placed Sempra Energy and its subsidiaries on "rating watch negative" because of "uncertainty" regarding the operation and ownership of the joint venture.

RBS, under a European Union mandate, is being forced to sell its 51% stake in the metals and energy commodities joint venture trading operation known as RBS Sempra Commodities that was formed two years ago.

Until the past weekend, the leading bidder for not only RBS's 51% but also for the entire joint venture was JPMorgan Chase. Now, it appears that JPMorgan, or other bidders, may be interested only in the non-US trading portion of the joint venture, with Sempra Energy possibly retaining control of its big North American natural gas and power trading operations based in Stamford, Connecticut.

The Fitch report released early Tuesday noted the situation now "remains fluid." It said that prospects for the sale of the entire joint venture to a US bank "appear to have been knocked off course by political opposition to US bank ownership of proprietary trading operations."

Fitch assessed the past performance of the commodity trading joint venture with RBS, which was formed in April 2008 with the aim of having the big European bank provide capital to collateralize Sempra's numerous US and non-US trading books.

Fitch said that while it considered Sempra's commodities trading business more risky than other affiliated operations, it said that the way the joint venture had been structured was to put most of the risk on RBS.

Fitch noted that the joint venture's contribution to Sempra's consolidated earnings and cash flows "have been robust." The ratings agency estimated the contribution at approximately 38% of trailing 12-month consolidated Sempra Energy income for the first nine months of 2009.

Fitch said, however, that other options for the unit, "including the retention of a portion of the trading business by Sempra, raise other credit concerns, given the liquidity and capital requirements to conduct such businesses."

In its rating note, Fitch said Sempra's rating watch negative status also reflected "increased parent company debt issued to fund natural gas infrastructure investment since 2006," and the "likelihood of lower earnings and cash flow contributions from Sempra Generation, due to the effects of maturing contracts to sell power to the California Department of Water Resources and expectations implied by the current forward power curve." *— Jeffrey Ryser*

EPSA announces new chairman and officers

The Electric Power Supply Association, the national association representing competitive power suppliers, on Tuesday unveiled a new chairman, officers, and at-large members of its executive committee for 2010.

Clarence Hopf, president of PSEG Energy Resources & Trade, was unanimously elected EPSA's new chairman for 2010 by its board of directors. He has served as president of PSEG Energy Resources & Trade since June 2008. Previously he was president of PPL EnergyPlus and before joining PPL in 2005 as a senior vice president, he served as a vice president at Goldman Sachs in New York.

EPSA also announced that Jack Fusco, president and CEO of Calpine, will assume the role of EPSA's first vice chairman and Ronald Litzinger, president and CEO of Edison Mission Group, will become EPSA's second vice chairman.

EPSA said that Zin Smati, president and CEO of GDF Suez Energy, will serve as the association's secretary and John O'Neal, senior vice president and chief compliance officer of Mirant, will become treasurer.

Serving as at-large executive committee members are: Bruce Levy, president of International Power America; Kenneth Cornew, president of Exelon Power Team; Mark Jacobs, president and CEO of RRI Energy; Gary Morsches, president and COO of Conectiv Energy Supply; and Mark Quartermain, president of Shell Energy North America. *— Jason Fordney*

Senate could split bills ... from page 1

"The concept of incentivizing clean energy so that it's the cheaper more effective kind of energy is one that is proven to work and is actually a market-based approach," he said. "A lot of time people just respond to incentives."

The acknowledgement is a departure from the legislative strategy that Senate Majority Leader Harry Reid of Nevada has long advocated. Reid has said he wants an energy bill with a renewable electricity standard, efficiency standards and other provisions to be combined with a cap-and-trade bill which is still in the works.

Several moderate and conservative Democrats, most notably Byron Dorgan of North Dakota, have said that an energy bill without a carbon cap should be able to pass. The Energy and Natural Resources Committee passed the energy bill last year with Democratic and Republican support.

The centerpiece of that bill is an RES that would require electric utilities to generate 15% of their power from renewable sources by 2021.

Committee Chairman Jeff Bingaman, a New Mexico Democrat, has said that he is open to the idea of a bill with only energy provisions.

"We support whatever the majority leader does. It's his call," Bingaman spokesman David Marks said.

Reid's aides did not immediately respond to requests for comment.

Earlier in his talk, Obama noted that the two parties should find a way to work together, even if there is disagreement over the threat of global climate change.

"Republicans and Democrats may not see eye-to-eye on the threat of global warming," he said. "I happen to think the evidence is overwhelming. Some disagree. We can have a respectful argument there. But shouldn't we agree that American-grown energy is good for our security, and that new clean energy jobs are good for our economy?"

Obama also said that the tens of billions of dollars devoted to renewable energy in his recovery act helped revive the clean energy sector in the US, which was nearly wiped out by the recession.

"This past recession almost killed our homegrown clean energy sectors," he said.

Obama strongly endorsed building new nuclear power plants, coal-fired power plants with carbon capture and storage, and efforts to retrofit homes to make them more energy efficient. His budget which came out Monday tripled loan guarantee support for nuclear power to $54 billion.

"We have to invest in innovation and new technologies," he said. "We can make significant profits and create huge jobs just by upgrading existing technology." *— Alexander Duncan*

Entergy Q4 earnings rise ... from page 1

cents/share, in the fourth quarter of 2008.

Entergy Chairman and CEO Wayne Leonard said during a conference call with energy analysts that the company's regulated utility subsidiaries and Entergy Nuclear performed well in the fourth quarter, particularly considering the ongoing economic downturn. He also talked extensively about Entergy Nuclear's Vermont Yankee nuclear plant, which has become a focus of local concern (see story p. 5).

Entergy's utility and parent units in the fourth quarter posted earnings of $107 million, or 56 cents/share, compared with a loss of $82.6 million, or 38 cents/share, in the same period a year earlier.

On a weather-adjusted basis, retail electricity sales to Entergy utilities' residential customers rose 4.6% to 7.421 million MWh in the fourth quarter from 2008's fourth quarter, while sales to commercial and governmental customers rose 2.8% to 6.635 million MWh and sales to industrial customers rose 7.1% to 9.235 million MWh.

Entergy CFO Leo Denault said during the conference call that the improvement in industrial sales by the company's utility units in the fourth quarter was driven by the large industrial customer group, particularly in chemicals and refining. Small and mid-sized industrial customers also showed signs of recovery, and Entergy expects usage growth in all customer classes in 2010.

Entergy's nuclear subsidiary earned $169.5 million, or 89 cents/share, in the fourth quarter, compared with $226.6 million, or $1.14/share, in the same period in 2008. "[C]ontributing to the lower results was higher operation and maintenance expense during the quarter due to the absence of refueling outages in the quarter and associated deferral of costs," the company said.

Leonard said during the call that in the fourth quarter Entergy Nuclear's plants operated with a combined capacity factor of 99%. Entergy's non-nuclear wholesale power unit, in turn, earned $37.2 million, or 19 cents/share, in the fourth quarter, compared with $26.5 million, or 13 cents/share, in 2008's fourth quarter.

Leonard and Denault noted during the call that Entergy's utility units in recent months have either secured positive regulatory rulings regarding their rates and cost recovery or are in the process of pursuing such rulings.

Entergy Texas, for example, in November issued $546 million in securitization bonds related to Hurricane Ike storm costs, and is seeking a base rate increase of $198.7 million to restore the utility's rate of return on equity to a more acceptable level. In its December rate filing, Entergy Texas proposed the adoption of formula-based rates, as well as the implementation of new rate riders to more quickly recover its transmission investments, and to recover the capacity costs associated with purchased power.

Entergy Gulf States Louisiana and Entergy Louisiana, meanwhile, entered into a "black-box" settlement with the Louisiana Public Service Commission staff to recover more than $628 million in storm costs, and now are seeking streamlined cost recovery for their transmission investments. The utilities also are pressing for a transmission rider that would enable them to more quickly recovery their transmission investments.

Regarding its still-planned spin-off of Entergy's 5,000 MW of non-utility nuclear assets in the Northeast and Michigan to a new company call Enexus Energy, Leonard said that the New York Public Service Commission is expected to issue its ruling in the matter as soon as its February 11 meeting.

"An acceptable outcome in New York moves us back to Vermont," he said, adding that spin-off approval by Vermont regulators by the end of the first quarter would enable Entergy to proceed with the spinoff — with Vermont Yankee as part of Enexus — by mid-year. A failure to get Vermont's approval could lead the Enexus spinoff to proceed in the second half of this year — without Vermont Yankee.

Entergy in November 2007 announced its plan to spin off its non-utility nuclear assets into Enexus and to form a 50-50 joint venture with Enexus called Equagen to operate Enexus' plants. The plan has been set back, however, by delays in securing state regulatory approvals, and by the financial/credit crisis.

Finally, Entergy on Tuesday affirmed its 2010 earnings guidance in the range of $6.15/share to $6.95/share, "assuming a business-as-usual operation for the full year." — *Housley Carr*

Norris getting up to speed … from page 1

joining the commission. Having "just gotten back on this train," he related, "I am naturally gravitating to those areas right now that I am most familiar with," such as cost allocation and demand response.

In addition, "two issues that I want to bring my own game to a higher level on are reliability and cybersecurity," Norris said. Those are "two critical issues we face," he maintained, and "we need to make sure that they are adequately in the mix as we look at smart grid, as we look at demand response, as we look at expansion of the transmission grid."

With the industry relying on a "somewhat antiquated infrastructure to do more and more," it is essential that "we do it in a way that is both reliable and has adequate cybersecurity safeguards," he said.

Norris was a driving force behind the Upper Midwest Transmission Development Initiative launched in late 2008 by the governors of Iowa, Minnesota, North Dakota, South Dakota and Wisconsin. The goal is to identify transmission projects, as well as allocate costs, needed to support development of wind generation in the region.

Discussing how UMTDI came to be, Norris recalled that "it seemed like we kept running into obstacles that the larger the footprint was, the more difficult the challenge was to reach consensus on cost allocation. So we tried to narrow it." The five states had some differing interests, but "overarching they had a mutual interest in expanding transmission capacity" to meet renewable standards in the most cost-effective way and to move wind resources to market.

"If we could tackle the cost-allocation issues within that region, hopefully we would become an example on how to expand beyond that," he said.

Since arriving at FERC, "one thing I have learned so far is that many of the issues are exactly the same" as when he left the IUB a year ago. "I don't want to say there hasn't been progress made, but we still haven't resolved some of those key issues that stand in the way of adequate transmission upgrades and expansion, and that is cost allocation and siting," Norris said.

Testifying at a December 2007 FERC technical conference on the clogged interconnection queues at the nation's regional transmission organizations, Norris was among many to advocate moving past the first-come, first-served approach initially adopted by the commission. Norris said Monday he is still getting "up to speed" on what changes implemented by FERC since then.

However, "I would be surprised if there has been substantial improvement" because the interconnection issue is a "tough nut to crack," he said. "You've got the combination of physics and economics and due process all converging at the same time and not necessarily with the same set of rules."

The challenge for FERC is, "have we adequately enabled those projects that are ready to go," and are feasible, "to navigate and accelerate through the queue, and not be held up by a tremendous amount of speculative projects?" It is important to protect "people's rights to get in the process," Norris asserted, but it should not be "overly cumbersome or expensive" to participate. The process must "make sure that we are getting projects approved and built."

Are organized markets competitive?

A perennial issue for FERC is debate over whether organized electric markets are competitive and producing fair prices. "While I was on the Iowa board and active in all this, I would like to think I had a healthy skepticism of whether [markets] were working. I thought in theory they made sense," and in general "were going in the right direction," Norris said.

The information he was getting at that time was it would prove itself out, Norris said. "As I sit here today," he continued, "I haven't changed my generally positive opinion that they will prove out." But that is not enough. "I'm looking for the real results that will factually prove itself out."

FERC's strategic plan calls for, and its new budget proposal would fund, the development of operational and performance metrics for RTOs.

"We are going to look at these metrics and try to be more definitive in the benefits," Norris explained. Having said that, for "folks who don't like the markets, I don't know if you are ever going to have enough information," he acknowledged.

While not convinced "you will ever win over the folks who are negatively inclined toward the process," Norris is hopeful that FERC "can be the objective viewpoint here to confirm" whether the markets are competitive.

Challenges face demand response in RTOs

Demand response is gaining a larger foothold in the capacity markets of some RTOs, but has begun to stall in some energy markets. Two primary issues have emerged: measurement and verification of the demand response actually provided, and compensation.

With regard to measurement and verification, "you can't let the perfect be the enemy of the good," suggested Norris, who chaired the MISO demand response working group and was a member of the demand response collaborative sponsored by the National Association of Regulatory Utility Commissioners and FERC. "We have adequate knowledge now that this shouldn't hold up demand response going forward," he said, and "experience will enable us to even be more precise" in the future.

As for compensation, "we have to be supportive of getting demand response in the market," Norris said, "and treating it on an equal footing as supply . . . is a positive first step."

Some in the industry have suggested that scarcity pricing in RTO markets would eliminate the need to measure, verify or incent demand response, *i.e.*, customers would simply reduce use to avoid high energy costs. Asked if that is a viable option, Norris maintained that "it is too soon. I don't think the capacity of consumers is at a place yet where there can be a real response to scarcity pricing."

As the commission goes about its business, climate change remains the 800-pound gorilla in the room.

"Until Congress makes a decision on carbon, our role is generally to promote more diverse fuel sources because it is a positive for the country," Norris said. "I think everyone is waiting and hoping that they will provide more certainty in the near future."

Absent congressional action "we continue to have this gray area about our national carbon policy, and that creates uncertainty and hampers, I think, better economic efficiency of our energy supply," he said. While "not wed" to either cap-and-trade or a carbon dioxide tax, Norris believes the nation must have a policy that reduces and "takes into account external costs of carbon emissions." — *Craig Cano*

Utilities seen having edge … from page 1

sheets" and without the need for project financing from banks.

In contrast, he said, "it has been very hard for smaller developers" to secure the project financing they often require to advance renewable projects to construction.

"In 2009 you couldn't get any project finance debt deals done unless you had a very strong sponsor and the project was squeaky clean," said Alam, noting that before the collapse of Lehman Brothers in September 2008 there were "about two dozen banks involved in project finance deals for renewables." That number fell to half a dozen last year, he said, though it has now rebounded to 10 or more.

Utilities and their affiliates have become increasingly interested in renewables in the past year or so as it became clear that federal support — in the form of grants, production tax credits and convertible investment tax credits — was growing and likely to continue over the long term.

NextEra Energy Resources, the unregulated affiliate of Florida Power & Light, was a pioneer in renewables, and is now a leader in both wind and solar power. But several other utilities and affiliates — including Duke, Dominion, Puget Sound Energy, Sempra Energy and, most recently, Southern Company — also are "dipping their toes" in the renewables market.

Southern said last week that it has established a new subsidiary called Southern Renewable Energy to develop renewable power projects in the US; the new unit already has formed a joint venture with CNN founder and environmental activist Ted Turner to focus on utility-scale solar power projects in the Southwest.

Duke Energy Generation Services, the competitive generation affiliate of Duke's utilities, also said last week that it has purchased its first solar project — a 15-MW facility under development near San Antonio — from Juwi Solar.

Dominion is another example of utilities and their affiliates expanding into renewables. It is half-owner of three wind farms totaling more than 800 MW that are in operation or under construction in West Virginia, Indiana and Illinois.

The difficulty that smaller developers have faced in financing and advancing renewable projects also has led utilities to build, own and operate such projects on their own rather than buying power from facilities developed by others.

Westar Energy, which already owns half of the 300 MW of wind capacity on its system, said earlier in January that it has concluded a solicitation for up to 500 MW of additional wind power by acquiring the development rights for a large wind project that Infinity Wind Power has been developing near Spearville in western Kansas.

Still, utilities and their affiliates are unlikely to dominate the development of renewables, or squeeze independent developers entirely out of the market, said David Gross, chief analyst at FreeSky Research of Arlington, Virginia. FreeSky is an economic analysis firm that focuses on alternative energy and telecommunications.

Entities such as FPL Group, Duke and Southern may have access to the capital needed to develop wind farms and other renewable projects, Gross said, but so do private equity funds, endowments and pension funds.

Utilities and their affiliates typically enjoy "a lower cost of capital than a lot of developers," said Gross, but many developers also are benefitting from investments by private equity funds and others looking for places to invest equity that has been "sitting on the sidelines."

Well-sited wind farms and solar facilities offer returns to private equity funds, pension funds and the like that are far better than returns from other investments — such as commercial real estate — in the current economic environment, Gross said. So utilities and their affiliates will never overtake the renewables market, despite their relatively easy access to renewable-project financing, he said. — *Housley Carr*