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Sponsors Call For Tougher RFPs

Developers are pushing utilities to strengthen criteria for RFPs.

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Horizon Stalks Tax Equity

Horizon Wind is looking for tax equity for two wind farms.

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Solar Power & Investment Summit

Check out what was hot in San Diego.

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FERC EYES LOOSER M&A FRAMEWORK

The U.S. Federal Energy Regulatory Commission is proposing to reduce the hurdles to getting mergers and acquisitions in the sector approved. Up for debate are more qualitative analysis of hook-ups and also higher tolerance for deals that by mathematical analysis show reduced competition. Industry watchers say the changes could be a major shift in the lens through which FERC examines deals and would impact the way companies approach possible mergers.

While it's rare for FERC to reject an M&A application, companies interested in a particular transaction often won't proceed beyond initial discussions if there's any question about whether the deal would garner federal approval, observers say.



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Solar Power & Investment Summit

OVERSEAS ARRIVALS SEEK NORTH AMERICAN SOLAR DEBT

A new raft of international developers are seeking financing for \$600-830 million of North American solar projects. GCL Solar, Gestamp Solar and Enfinity are among the sponsors.

GCL Solar, a member of Chinese poly silicon producer GCL-Poly Energy Holdings Limited, is talking to European banks about financing 75 MW of projects in Puerto Rico and the Central Valley of California this year. It prefers to contribute 10-30% of project costs via equity, complemented by debt and tax equity. The firm has a U.S. development pipeline of at least 1 GW over the next three years. The Puerto Rico Electric Power Authority has a power purchase agreement for a 46 MW plant in the territory, said Jimmy Chuang, GCL Solar head of structured finance in San Francisco.

(continued on page 12)

EMERA, FIRST WIND TALK NORTHEAST JV

Emera is negotiating with First Wind to buy a stake in its 270 MW operational fleet in the Northeast. The Halifax, Nova Scotia-based power company is looking at the joint venture deal as a way to get a foothold in the Northeast wind market.

The negotiations are on-going and serious, say two M&A bankers. Credit Suisse and Macquarie Capital are advising Boston-based First Wind; RBC Capital Markets worked with Emera on its recent acquisition of Maine utility Maine & Maritimes and is believed to be advising on this as well.

"It's a company with extensive New England interests," says a deal watcher of Emera, noting that a partnership with First Wind would fit its growth strategy. Emera's interest stems from plans to develop \$150 million in transmission projects in New England that would move wind power from Maine to load centers around New England. The company is

(continued on page 12)

Check www.iipower.com during the week for breaking news and updates.



At Press Time Horizon Kicks Off Tax Equity Hunt

Horizon Wind Energy is looking for tax equity investments for two projects totaling 198 MW that are under construction in Ohio and Oklahoma. Teasers went out to potential investors last week, says a deal watcher.

The 99 MW Timber Road II project near Payne, Ohio, has a 20-year power purchase agreement with AEP Ohio and is scheduled to be online this summer. Horizon's 99 MW Blue Canyon VI project in Caddo County, Okla., is scheduled to be online this year; whether it has a PPA could not be immediately learned.

In the last year, Horizon has tapped JPM Capital and Wells Fargo as tax equity investors for four farms (PFR, 10/28 & 7/7). Spokespeople and officials at the banks did not return calls by press time.

Whether Horizon is using an advisor, which investors are being targeted and a timeline for the transaction could not be immediately learned. A Horizon spokeswoman in Houston did not return a call.

Developers Push For More Rigorous RFPs

Large solar developers and some project attorneys are calling for utilities to strengthen requests for proposal criteria to filter out long-shot projects.

In a session on price competition and project viability, panelists at Infocast's Solar Power Project Finance & Investment Summit 2011 in San Diego, Calif., homed in on California, which is flush with rookie developers. "Fuzzy-headed developers" with land tracts in the state but little experience are distorting the market, said Todd Glass, a partner at Wilson Sonsini Goodrich & Rosati in Seattle. "There are literally hundreds of developers throwing megawatts at utilities... and utilities have to go to [the California Public Utility Commission] with the best cost, best fit."

Pacific Gas & Electric considers three broad criteria when scrutinizing applicants to RFPs: high project viability, low cost and achieving renewable portfolio standard requirements. "The biggest thing is certainty," said Uday Mathur, principal of emerging clean technologies and energy procurement at PG&E in San Francisco. "If you're further along in the [development] process... and you say, 'We're 80% baked,' that's more attractive."

Some experienced developers favor clearing out projects that have never materialized from utilities' queues, to make room for more viable and immediate projects to get power purchase agreements. Tim Heming, v.p. of development at NRG Solar, predicted that 30% of projects with PPAs would be removed from the queues of California utilities this year, a jump of more than double from 2010.

Mathur added on the conference sidelines that developers struggling to deliver projects after landing offtake contracts should discuss the situation with utilities. Renegotiations of PPAs are sometimes possible, he said. Developers who fail to build contracted projects may risk penalties, including losing their deposits on bid applications and related costs. *For more conference coverage, see page 6.*

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**Institutional
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INTELLIGENCE FIRST

Project Finance

Western Wind Hunts Tax Equity

Western Wind Energy is looking for tax equity for its 120 MW Windstar farm in Tehachapi, Calif., and its \$120 million, 30 MW solar plant in Yabucoa, Puerto Rico. The Vancouver, B.C.-based company has tapped **Rabobank** to lead the search.

Rabobank's efforts coincide with the hiring of **Edward Levin**, who is working with Western Wind on the search for tax equity. Levin, the former president of renewables consultant **EYL Capital** and v.p. in **Morgan Stanley's** structured products group, started in January.

Rabobank participated in a \$249 million loan supporting Windstar that closed in January (PFR, 1/7). **Manulife Financial** led that deal and is also leading a financing backing the Yabucoa plant (PFR, 2/8). The amount of tax equity investment sought and a timeline for securing the investment couldn't be learned. **Jeffrey Ciachurski**, Western Wind ceo, didn't return a call and a Rabobank official declined to comment. A Manulife official also couldn't be reached by press time.

The mandates are among a handful that Rabobank has landed since it began advising on tax equity deals this year, says a financier familiar with the lender.

The **Puerto Rico Electric Power Authority** inked a 20-year power purchase agreement for Yabucoa earlier this month.

LS Talks Transmission Debt

LS Power is talking with lenders about borrowing just under \$400 million to help build greenfield lines in west Texas. At least two lenders are expected to lead the deal, says a senior financier.

The developer is considering alternatives to non-recourse packages to finance the 230 miles of transmission in Texas' Competitive Renewable Energy Zones, financiers say. Under one potential structure, LS affiliate **Cross Texas Transmission** would borrow some funds at the holding company level and some at the project level. Another option would be to tap first and second lien debt. LS is also looking to sell a minority stake in Cross Texas Transmission to help finance construction (PFR, 3/18).

LS Power initially sought a non-recourse package featuring a construction-type revolver, to be taken out by a longer-term facility, pending permitting (PFR, 2/13/09). Three Cross Texas lines were approved by the **Public Utility Commission** of Texas in the past six months, says a utility spokesman in Austin. The reason behind the company's consideration of alternative financing packages could not be learned.

Joe Esteves, LS cfo in New York, didn't return calls by press time. LS expects to initiate construction on the trio of 345 kV double circuit, alternating current lines this summer. Operation is targeted for the third quarter of 2013.

Terra-Gen Geo Funding On To-Do List

Terra-Gen Power intends to talk to lenders later this year about a \$60-100 million financing backing a geothermal plant it is developing in the U.S., say deal watchers familiar with the company. The identity and location of the project as well as deal details, including structure, pricing and tenor, couldn't be immediately ascertained. **John O'Connor**, Terra-Gen cfo in New York, declined to comment. Bank officials declined to comment or didn't return calls.

Terra-Gen also expects to borrow up to \$800 million in the next year to help build four phases of its Alta Wind Energy Center in Tehachapi, Calif. (PFR, 3/18).

Macquarie Consortium Takes Mexican Wind Stake

Macquarie Group affiliate **Macquarie Mexican Infrastructure Fund** has joined a consortium that has bought a 396 MW late stage wind project in Mexico from Spanish renewables developer **Preneal Group** for \$89 million.

The consortium, which comprises, **MMIF**, **Fomento Económico Mexicano** and **Macquarie Capital** has engaged **Macquarie Capital Advisors** to secure long-term financing for the project in Oaxaca, says a Macquarie spokeswoman in New York. Preneal had been talking to lenders about bankrolling the project, though some financiers were skeptical about monetizing PPAs with non-utility offtakers (PFR, 8/11). The first phase of the project is slated to come online this year with later phases coming online through 2014. The project has 20-year power purchase agreements with **FEMSA** and **Cerveceria Cuauhtémoc Moctezuma**, a subsidiary of **Heineken**.

MMIF, FEMSA and Macquarie Capital have 32.5%, 45% and 22.5% interests, respectively, in the consortium. FEMSA is a combination of **Coca-Cola FEMSA**, the largest public bottler of Coca-Cola in the world, and **FEMSA Comercio**, Mexico's largest convenience store operator. A spokesman for FEMSA in Mexico did not respond to inquiries by press time.

MMIF has been targeting investments in energy and utilities since it opened its office in Mexico City in 2009 and since the government established the **Fonda Nacional de Infraestructura** in 2008 to facilitate foreign investment in energy and infrastructure in the country (PFR, 11/24).

Ignacio Martinez de Velasco, cfo of Preneal in Madrid, did not respond to messages.



Mergers & Acquisitions

AES, Edison Mission Enter Sale Leaseback

Edison Mission Energy has purchased half of AES' 904 MW Huntington Beach natural gas-fired facility in California under a sale leaseback agreement. EME is using the purchase as a way to line up air permits for another natural gas-fired project that is expected to go online in 2013.

AES will lease units 3 and 4, totaling 452 MW, back from EME and operate them for up to two years. Edison Mission is then expected to retire the units and transfer the emissions allowances from Huntington Beach to EME's proposed \$520 million, 479 MW Walnut Creek natural gas-fired peaker in City of Industry, Calif. The Huntington Beach units can be retired starting Oct. 31, 2012.

Walnut Creek had hit obstacles lining up an adequate amount of emission allowances in the **South Coast Air Quality Management District**, says **Doug McFarlan**, senior v.p. of public affairs at Edison Mission in Chicago. "You can purchase credits in the market but there's not enough in the market for Walnut Creek," he says, noting that under the district's policies you can transfer permits from one plant to another. McFarlan is not aware of another EME transaction aimed at securing emission allowances in at least a decade. EME will acquire emission allowances for sulfur oxide and nitrogen oxides from Huntington Beach.

EME expects to start looking for financing for the \$520 million Walnut Creek soon, likely before the sale leaseback transaction wraps next quarter, says McFarlan, declining to comment on the financing process. It has a 10-year power purchase agreement with **Southern California Edison**.

The other two units at Huntington Beach will continue to be owned and operated by AES. Power is sold to third-party buyers, according to a March 17 filing with the U.S. **Federal Energy Regulatory Commission**, and the contracts will not change after EME takes ownership. The identity of the offtakers and whether Units 1 and 2 will also be retired in the coming two years could not be immediately learned.

McFarlan declined to comment on whether EME used an

advisor. Whether AES used an advisor could not be immediately learned. Spokespeople for AES in Arlington, Va., did not return calls.

Wayzata Chases Gila, Entegra Launches Go-Shop

Entegra Power Group has launched a go-shop process for a roughly 540 MW merchant block of its 2.2 GW Gila River gas-fired facility near Phoenix, after entering into a sale agreement with **Wayzata Investment Partners**. **Barclays Capital** started the go-shop process, where an entity starts looking for a higher bid after receiving an unsolicited offer, just over a week ago. Bids are due April 8, says a deal watcher.

Wayzata and Entegra submitted a filing Tuesday with the U.S. **Federal Energy Regulatory Commission** to have the transaction approved unless Entegra finds a higher bidder, says **Michael Schuyler**, ceo of Entegra in Tampa, Fla. "That transaction is essentially done," he says.

John Plaster, managing director at Barclays, was involved with the auction last year and is said to be working on this sale effort (PFR, 2/25/10). Barclays officials declined comment through a spokesman.

Entegra sold a 538 MW unit of Gila River to Wayzata last fall (PFR, 7/9). A potential buyer could sell power into the wholesale markets independently of the units owned by Wayzata or Entegra or it could seek a power purchase agreement for the acquired unit.

Entegra intends to hang onto the unit that has a tolling agreement with **Arizona Public Service** that expires in May 2017, says Schuyler, adding there are no plans to sell the third, and last, merchant block. Each unit of Gila River is just under 550 MW.

Proceeds from this sale are expected to be used to pay down debt just as with the initial sale. Entegra has a seven-year \$450 million second lien term loan and \$30 million second lien synthetic letter of credit maturing in April 2014 (PFR, 3/9/07). In addition, Entegra has an eight-year \$850 million payment-in-kind term loan that is junior to its first and second lien

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maturing in 2015. The amount of debt outstanding on the loans could not be learned.

Blake Carlson, a partner at Wayzata in Wayzata, Minn., who was involved with the auction last year, was not immediately available for comment.

Tight Races Emerges For Arlington, Griffith

ArcLight Capital Partners, **Capital Power** and **Quantum Utility Generation** are the frontrunners in the bid to buy **LS Power's** two natural gas-fired plants in Arizona. Capital Power and QUQ are very aggressive on these two plants, deal watchers say, with one noting that purchase prices could mimic the \$680 per kW that Capital Power is paying for LS' 520 MW Bridgeport facility. Final round bids came in earlier last week and a buyer could be decided as early as this week, says one banker. The number of bids that came in or purchase prices could not be learned.

QUQ, the Houston-based IPP led by **Larry Kellerman** and backed by **Quantum Energy Partners**, is looking for its first

acquisition since its founding last year and is aggressive in Arizona, says one banker. There had been chatter that ArcLight and QUG had teamed up on a combined bid but that is not the case, says a deal watcher.

Credit Suisse and **Citigroup** are running the sale of the 579 MW Griffith in Kingman and 572 MW Arlington Valley in Arlington, with **Ahmad Masud**, managing director at CS, and **Jack Paris**, managing director at Citi, heading the effort.

A staple financing has been offered up by CS as well as **BNP Paribas**, **Citigroup** and **Royal Bank of Canada** although the finalists have mostly opted to pursue their own financing route, say bankers. Capital Power typically purchases on balance sheet while ArcLight and QUG would look to other banks for leverage, notes one banker. The terms of the staple package could not immediately be learned.

Calls to **Joe Esteves**, cfo at LS Power, Kellerman and Masud were not immediately returned. Officials at RBC and Citi declined to comment as did a Citi spokesman. Spokespeople for ArcLight, BNP, CS and Capital Power either declined to comment or did not immediately return calls.

Corporate Strategies

Columbia Power Unit Plots Bonds For Hydro

Columbia Power affiliate **Arrow Lakes Power** is planning to issue up to CAD350 million (\$356 million) in a private placement to fund a 335 MW expansion to the Waneta hydro project in British Columbia. **CIBC World Markets** is kicking off a road show for the 30-year senior secured notes in Canada next week.

Roughly \$265 million of the proceeds will be distributed to Arrow Lakes' shareholders, Columbia Power and **Columbia Basin Trust**, which will then put the funds toward Waneta's development, says **Michael Caranci**, managing director of energy at ratings agency **DBRS** in Toronto. Remaining proceeds will repay about \$46 million in 5.39%, 12-year bonds coming due in 2015, and go toward \$34 million in reserve accounts that will back the latest bond issue. DBRS rates the prospective issue

David De Git, treasurer of Columbia Power, and **Jane Bird**, president and ceo, are working on the private placement for Columbia Power in Castlegar, B.C. **Cliff Inskip**, managing director and head of infrastructure & project finance, is heading up the deal for CIBC. Bird was not available to comment and inquiries were forwarded to Inskip, who did not respond by press time. Details on the roadshow and expected pricing could not be learned.

Fortis is a joint venture partner on the Waneta expansion with

a 51% stake in the project. Province-backed entities Columbia Power and Columbia Basin hold 32.5% and 16.5% stakes, respectively. Construction on the expansion to the existing 450 MW dam began last month and is expected to be complete in 2015. **BC Hydro** has a long-term offtake contract for the facility.

The project had been put on hold (PFR, 1/29/10) after lenders had been gearing up to bid on a financing for the facility (PFR, 1/30/09). The status of any loan financings backing the project could not be learned.

People & Firms

LS Lands BofA MD

Edward Sondey, managing director at **Bank of America**, is expected to take a position at **LS Power**. His last day in BofA's New York office where he worked in power M&A, was Thursday.

Sondey was formerly a managing director at **Merrill Lynch** and joined BofA, along with **Parker Weil**, when it acquired Merrill in 2008. Sondey was v.p. of finance at **PSEG Power** before he joined Merrill (PFR, 5/3/2005).

Details such as his title or start date at LS could not immediately be learned. **Joe Esteves**, cfo, did not return a call. The bank's plan for replacing him could not immediately be learned. Weil was not immediately able to comment. A BofA spokeswoman declined to comment.

Solar Power & Investment Summit 2011

Loan Guarantees, renewable portfolio standards and tax equity created the buzz at Infocast's Solar Power & Investment Summit 2011. Bankers, developers, investors and attorneys gathered at the Paradise Point Resort & Spa in San Diego, Calif., for the event on March 23-24. Senior Reporter Brian Eckhouse filed the following stories:

MetLife Takes Stake In BP Solar Project

MetLife has bought in to BP Solar's 32 MW Long Island Solar Farm as an investor and partner, said **Jim Shandalov**, BP senior director of solar development in San Francisco, on the sidelines of the conference. BP and MetLife will share joint ownership of the Brookhaven, N.Y., photovoltaic farm. CP Energy served as financial advisor to MetLife on the deal.

Shandalov declined to specify the terms of the deal and whether the partners would seek leverage to fund the project. A MetLife official didn't return a call and a CP Energy representative in Boston didn't reply to an e-mail requesting an interview.

The Long Island Power Authority has a 20-year offtake agreement for the roughly \$128 million farm. The farm is expected to be operational by year-end.

MetLife also has an ownership stake in Xcel Energy's 19 MW photovoltaic plant in Alamosa County, Colo. (PFR, 2/26/10).

RPS, Technology Hurdles Remain For Solar

Solar generation is in growth mode, but technology and a lack of federal renewable portfolio standards continue to dog the sector, according to panelists at the conference.

There is mounting public and private sector support for renewables, amid the Japanese nuclear crisis, the BP oil spill in the Gulf of Mexico, conflict in the Middle East and the deaths of coal mine workers. "That constant drip affect over the long run will push renewable energy to the forefront," said **Daniel Alcombright**, Solon Corp.'s v.p. of North America, a developer with offices in Arizona, Germany and Italy.

Technology questions plague the sector, however. The trend of small utility-scale projects and patchwork state policies are partly the result of solar practitioners having yet to identify what type of technology works best in which regions in the U.S., said **Carmine Tilghman**, renewable energy resources director at Tucson Electric Power Company. In addition, few solar technologies have reached a 20-year

performance history, noted **Tristan Grimberty**, enXco president and ceo in San Diego. "What's happening in Japan is not a game changer... It's beneficial to gas—not renewables," Grimberty reflected. "We're looking at a gas and renewables model."

Despite an upswing in public sentiment, **Jerry Bloom**, Winston & Strawn partner in Los Angeles, bemoaned the unlikely passage of a federal RPS. Grimberty echoed the sentiment, noting that the industry seems to have reached that view in this political climate, but said a lobbying effort should be made, no matter the odds.

Citi Readies Two Solar Thermal Deals

Citigroup is preparing two large financings backing solar thermal projects. The lender is targeting financial close this summer.

In an interview on the sidelines of the conference, **George Revock**, director in the bank's asset finance group, said he expects the financings to include U.S. Department of Energy loan guarantees as well as tax equity. The structure for the Citi-led financings, each in the hundreds of millions, will be tax equity partnerships.

He declined to name the sponsors and reveal the loan sizes. A DOE spokeswoman in Washington, D.C., couldn't be reached by press time.

EDF Targets May For Ontario Solar Debt



Tristan Grimberty

EDF Energies Nouvelles aims to wrap a financing backing its roughly \$48 million St. Isidore B solar plant in May. The developer has yet to mandate banks to lead the deal, said **Tristan Grimberty**, president of San Diego-based affiliate enXco on the sidelines of the conference.

Dexia Crédit Local and **Union Bank** have discussed the deal with EDF. The banks provided debt to the sister plant, St. Isidore A, in January (PFR, 1/6). Grimberty and a Union Bank official in Los Angeles declined to comment. A Dexia official didn't return a call by press time.

EDF is targeting pricing at 225 basis points over LIBOR for the St. Isidore B financing (PFR, 3/9). The size and tenor of the



Daniel Alcombright

Solar Power & Investment Summit 2011 (cont'd)

financing couldn't be learned.

The **Ontario Power Authority** has a 20-year offtake agreement for the Nation, Ontario plant.

Financiers Divide On DOE Guarantee Impact

Financiers are split over the merits of the U.S. **Department of Energy's** loan guarantee program for commercial-ready technologies.

Projects, especially in the wind sector, that can land debt from commercial banks may be taking away federal funds from competitors with newer technologies, said **John Eber**,



Lance Markowitz

JPMorgan managing director of energy investments in Chicago. Lenders that are hungry to finance large-scale photovoltaic projects and even trough plants are often competing against or trying to cooperate with the DOE program, added **Lance Markowitz**, **Union Bank** senior v.p. in Los Angeles. "In a lot of instances, it's not

necessary and certainly not expedient" to opt for DOE support, he said.

Meanwhile, **Timothy Howell**, **GE Energy Financial Services'** managing director of power and renewable energy in Stamford, Conn., noted the DOE has helped lower the costs of utility-scale solar. "It's definitely an asset," he said.

The DOE program for commercial-ready projects launched under the 2009 American Recovery and Reinvestment Act. A DOE spokeswoman in Washington, D.C., didn't return a call by press time.

DOE To Process 25 More Loan Guarantees



Keith Martin

The U.S. **Department of Energy** is expected to process at least 25 more applications in the queue for federal loan guarantees. Announcements are anticipated in the next few weeks, said **Keith Martin**, partner at **Chadbourne & Parke** in Washington, D.C., at the conference.

Projects qualifying for the guarantee need to be commissioned by year-end, meaning financing must be wrapped well before that. Part of the filter process for the DOE includes choosing to provide loan guarantees for project that will meet the deadline, Martin said. There are

roughly 58 applications in the DOE's queue.

The urgency to wrap loan guarantees has the DOE essentially "acting like they're on steroids," Martin said, adding that the agency's expedited efforts make developer complaints about the once-glacial process obsolete. Thus far, the DOE has awarded 10 guarantees and has inked another 10 conditional commitments.

The closure of the remaining guarantees has a key side benefit to the DOE in the form of increased lobbying from winning and hopeful project sponsors to preserve the program. Congress is weighing the program's future (PFR, 1/13).

A DOE spokeswoman in Washington, D.C., didn't return a call seeking comment.

Reporter's Notebook

- The weather in San Diego might be a cliché, but that didn't stop attendees from enjoying it. While colleagues back in New York slogged through another wintry mix, they reveled in the California sunshine. Many held meetings on a sun-drenched porch overlooking Mission Bay, framed by the Coronado Bridge, and enjoyed the ocean breeze.
- One financier who has attended the conference annually marveled at this year's turnout—600 people—as opposed to 70 in the early days. But he bemoaned the mounting formality of the event, pointing to the abundance of suits. Several male panelists wore sports coats sans ties and some wore polo shirts, befitting San Diego's casual, seaside vibe.
- If you wait long enough... **Jerry Bloom**, partner at **Winston & Strawn** in Los Angeles, who has worked in renewables for 30 years, said he was perceived as a nerd in the 1980s. No longer. "I'm cool," he said at the conference dais. "I'm like the dude now."
- **Todd Glass**, partner at **Wilson Sonsini Goodrich & Rosati** in Seattle, on Congress and President **Barack Obama** extending the U.S. **Department of Treasury** cash grant in December, "That was the best holiday gift this energy lawyer could get."
- Lunch on Wednesday featured a spring salad with strawberries and chicken atop mashed potatoes, artichokes, tomatoes and sliced asparagus. Finger food at an outdoor evening reception included raspberry and brie blintzes.



INDUSTRY CURRENT

The Potential Impact of Dodd-Frank on the Energy Industry—Part II

Last week's Industry Current examined the parameters and enforcement of the Dodd-Frank Act. This week, the authors will discuss end-user exceptions, forward contracts and Dodd-Frank's effects in the energy-swap market.

When all is said and done, all swaps (including all swaps on a firm's books as of Dodd-Frank's enactment) will have to be reported, either through an exchange/clearinghouse or self-reported to a "swap data repository" under an end-user exception to the mandatory clearing requirement or because the swap is not traded on an exchange/cleared by a clearinghouse. The default mandatory requirement to clear all swaps through an exchange/clearinghouse mechanism would almost certainly subject firms irregularly hedging commercial risk to unaccustomed margining requirements, perhaps requiring daily margin calls, and to the resulting call on the firm's liquidity (margin must usually be cash or cash equivalents). Because of that implication, many of those providing comments to the **Commodities Future Trading Commission's** proposed rules have focused on the end-user exception to the clearing requirement.

If a firm can take advantage of the end-user exception, the swap does not need to be cleared as described. It must still be reported to the CFTC along with specified information about the end-user. The end-user exception imposes a number of requirements, including:

- (1) The trade must hedge or mitigate commercial risk;
- (2) One party to the trade (in our hypothetical, the energy firm) cannot be a financial entity (generally, an institution subject to any one of a number of federal banking, broker/dealer, and investment company regulations);
- (3) In connection with reporting the trade in question, the party that is not a financial entity must report to the CFTC how it meets its financial obligations for trades that are not cleared (Recall that the end-user exception merely relieves the obligation to clear the trade through a clearinghouse);
- (4) **Securities and Exchange Commission** filers claiming the end-user exception must have board approval for the non-cleared trade.

Each trade for which the end-user exception is elected must be reported. The report must include information about the

firm and, as we say, how the firm meets its financial obligations for trades that are not cleared. The information required in this regard includes whether the firm has credit support, has pledged or segregated assets, intends to rely solely on available resources, has a guaranty from some other entity or has other means of satisfying its financial obligations in connection with un-cleared trades.

Our strong hunch is that most firms will shrink from the burden and cost of these reporting requirements and, other than in connection with the most valuable bespoke trades for which no clearing mechanism exists, simply take their lumps and pay the incremental cost of executing the trade through a clearinghouse and bear the cost and hassle of margining.

Under Dodd-Frank, forward contracts that are intended to be physically settled are excluded from "swaps". Accordingly, a traditional power purchase agreement that provides for physical settlement should not need to be cleared or reported. Most likely, typical "book-out" (agreeing to a financial settlement instead of required physical settlement) will not cause a power purchase agreement to become a "swap" even though the contract is not in fact physically settled. It is an open question, and a serious one, whether power purchase agreements for delivery within ISO regions that act as brokers for all trades, such as NY-ISO, will qualify as "intended to be physically settled." It is also not clear yet whether renewable energy credits contracts qualify as swaps (are they "emission" swaps or something else?). Industry groups have asked the relevant government agencies to exclude them, but as with most of Dodd-Frank's swap regulations, the government has yet to produce a final rule. Similarly, emission allowance swaps (that are specifically identified as "swaps" in Dodd-Frank) raise the "physically-settled" question (since there may be no "physical" to actually settle), although various industry groups have urged the CFTC to include them in the exclusion. Finally, there are a number of potential "swaps," — e.g., financial transmission rights, auction revenue rights and others that have been specifically created or authorized by the U.S. **Federal Energy Regulatory Commission** as part its opening of energy markets to wholesale competition, where CFTC regulatory oversight was not expected, would be intrusive on existing and established FERC authority, and would risk substantial burden without obvious economic or other benefit. Notably, a required memorandum to Congress from both the CFTC and FERC regarding the demarcation of their respective regulatory authorities is now several months' overdue.

Significant players in the energy swap markets are likely to be

the most highly regulated – including reporting, business conduct and capital requirements. These entities will themselves be regulated, as opposed to the regulation of any particular energy trade. These affected players will be “swap dealers,” “major swap participants,” clearinghouses, exchanges and data repositories. Of course, regulation of clearinghouses and exchanges predates Dodd-Frank, but these will now be subject to increased oversight and regulation. So-called “swap execution facilities” and “swap data repositories” are new statutory creatures, created by Dodd-Frank, and are generally intended to facilitate market transparency. Swap dealers will be generally defined by their activities. SDs are market makers, accommodate trades, and generally stand on both sides of trades. Major swap participants will be defined by a proposed arithmetic formula. The MSP rules are designed to catch big players like AIG, firms holding billion dollar and more trades and substantial swap exposures. As with the rest of Dodd-Frank in this area, the CFTC and SEC are still working on the rules that will provide final rules and guidelines for these entities.

Despite these significant unknowns, we feel confident in saying

“Significant players in the energy swap markets are likely to be the most highly regulated – including reporting, business conduct and capital requirements.”

that most energy companies should not be regulated as SDs or MSPs and will almost certainly not find themselves to be unexpected clearinghouses, exchanges, swap execution facilities or swap data repositories. On the one hand, it should be quite clear to an energy firm that its hedging and trading activities propel it into the stratosphere of players caught up by the SD or MSP rules. Any firm whose trading activities are at those MSP-type levels should already be aware of it and will have to monitor the Dodd-Frank rulemaking process. The rules

regarding SD status will be slightly more ambiguous. Firms will have to monitor their respective personnel and the conduct and activities thereof more closely to ensure they do not unintentionally cross the line once established by final rule.



Paul Astolfi

This week's Industry Current was written by Paul Astolfi and J. Paul Forrester, partners at Mayer Brown.



Paul Forrester

Industry Current is a feature written by industry professionals that highlights and clarifies key issues in the power sector. *Power Finance & Risk* runs the feature periodically and is now accepting submissions from industry professionals for the Industry Current section. For details and guidelines on writing an Industry Current, please call **Sara Rosner** at (212) 224-3165 or email srosner@iineews.com.

News In Brief

News In Brief is a summary of publicly reported power news stories. The information has been obtained from sources believed to be reliable, but PFR does not guarantee its completeness or accuracy.

Americas

- **First Wind** brought its 30 MW Kahuku wind farm, in Hawaii online yesterday. **Hawaii Electric Co.** has a power purchase agreement with the farm, which uses **Clipper** turbines (*The Honolulu Star-Advertiser*, 3/24).
- **PSE&G** is gearing up for the next phase of installing solar panels to utility poles in New Jersey. The 40 MW initiative is slated to be complete next year (*South Bergenite*, 3/24).
- **New York State Electric & Gas Corp.** has is evaluating whether to develop the 150 MW Seneca compressed air energy project in an underground salt cavern. If it moves ahead, the project would be operational by 2014 (*The Ithaca Journal*, 3/23).
- The U.S. **Federal Energy Regulatory Commission** is prepared to determine how new transmission projects will be

paid for if developers cannot agree on a regional system (*Bloomberg*, 3/23).

- A \$140 million geothermal project that could be between 5-20 MW is being planned for a **Bell Diamond** mine yard in Montana. **Dennis Lester** is seeking permission to lease the land and develop the project (*The Montana Standard*, 3/23).
- **Hawaiian Electric** has signed a 20-year power purchase agreement with **SunPower** for a 5 MW project that is expected to go into construction later this year (*Energy Business Review*, 3/23).
- **Santee Cooper** and **SCE&G** are in talks to sell up to 10% of the power from their planned nuclear plant in South Carolina to the **Orlando Utilities Commission** (*Charleston Regional Business Journal*, 3/22).

Generation Auction & Sale Calendar

Generation Sale DATABASE

Following is a directory of ongoing generation asset sales. The accuracy of the information, which is derived from many sources, is deemed reliable but cannot be guaranteed. To report new auctions or changes in the status of a sale, please call **Holly Fletcher** at (212) 224-3293 or e-mail hfletcher@iinews.com.

Seller	Assets	Location	Advisor	Status/Comments
AES	Cayuga (306 MW Coal) Greenidge (105 MW Coal) Somerset (675 MW Coal) Westover (83 MW Coal) Huntington (904 MW Huntington CCGT)	Lansing, N.Y. Dresden, N.Y. Barker, N.Y. Binghamton, N.Y. Huntington, Calif.	Barclays Capital TBA	First round bids are due soon (PFR, 3/7). AES will lease two of the units from Edison Mission Energy under a new sale leaseback agreement so EME can transfer the permit allowances upon the plant's retirement (see story, page 4).
AES California Management Co.	Placerita (63 MW Natural Gas)	Newhall, Calif.	TBA	Clean Energy Systems is planning to retrofit the offline facility after its acquisition is finalized (PFR, 2/28).
Ameren Energy Generating Co.	Columbia (75% stake in 144 MW Simple Cycle)	Columbia, Mo.	TBA	The municipal utility is buying out Ameren's stake for \$45.2 million (PFR, 2/21).
Axio Power	Stakes (development PV)	Various		Has entered exclusive talks with a buyer (PFR, 2/21).
Brookfield Infrastructure Partners	Cross Sound Cable (24-mile Transmission)	N.Y., Conn.	TBA	Brookfield is talking to investment banks about a potential sale (PFR, 2/21).
Capital Power Income Fund	Various (1.4 GW in U.S and Canada)	Various	CIBC, Greenhill & Co.	Management presentations for potential second round bidders are underway (PFR, 1/17).
Entegra Power Group	Gila River (340 MW unit in 2.2 GW CCGT)	Phoenix, Ariz.	Barclays Capital	Wayzata Investment Partners has signed a sale agreement and Entegra has launched a go-shop. Bids due April 8 (see story, page 4).
FirstEnergy	Fremont Energy Center (707 MW CCGT)	Fremont, Ohio	No advisor	American Municipal Power will pay up to \$525.3 million for the in-construction plant (PFR, 2/21).
First Wind	Various (Wind)	Maine, New York	Credit Suisse Macquarie Capital	Talking to Emera about a JV (see story, page 1)
Iceland America Energy	New Truckhaven (35 MW Geothermal) East Brawley (10 MW Geothermal) South Brawley (Geothermal development)	Imperial Valley, Calif.	MDB Capital	Nevada Geothermal Power is buying the trio with the aim of two qualifying for federal subsidies (PFR, 2/28).
Liberty Electric Power	Liberty (568 MW Natural Gas)	Eddystone, Pa.		Owners are selling it as its hedges are about to mature (PFR, 2/7).
LS Power	Bridgeport (460 MW, CCGT) Arlington Valley (572 MW CCGT) Griffith (579 MW CCGT)	Bridgeport, Conn. Arlington, Ariz. Kingman, Ariz.	JPMorgan Credit Suisse, Citigroup Credit Suisse, Citigroup	Capital Power has agreed to buy it for \$355 million (PFR, 3/14). Capital Power and Quantum Utility Generation are the leading bidders (see story, page 5).
Morris Energy Group	York (52 MW CCGT) Pedricktown (132 MW CCGT) Camden (152 MW CCGT) Bayonne (180 MW CCGT) Elmwood (80 MW CCGT) Newark Bay (140 MW CCGT) Massena (85 MW CCGT) Dartmouth (70 MW CCGT) Dartmouth II (25 MW Simple Cycle) Lowell (29 MW CCGT)	York, Penn. Pedricktown, N.J. Camden, N.J. Bayonne, N.J. Elmwood Park, N.J. Newark, N.J. Massena, N.Y. Dartmouth, Mass. Dartmouth, Mass. Lowell, Mass.	Barclays Capital	Teasers for the 945 MW portfolio went out earlier this quarter (PFR, 2/14).
National Power	Big Valley Power (7.5 MW Biomass)	Bieber, Calif.	Bodington & Co.	Lender NexBank is in talks about a potential foreclosure (PFR, 2/21).
Noble Environmental Power	Granite Reliable (99 MW Wind)	Coos County, N.H.	No advisor	Brookfield is working with WestLB and Citigroup on acquisition and construction financing (PFR, 1/31).
Raser Technologies	Thermo 1 (14 MW Geothermal) Lightning Dock (15 MW Geothermal development)	Thermo, Utah Hidalgo County, N.M.	Bodington & Co.	Raser broadened the sale to include a development project and company (PFR, 3/7).
Recurrent Energy	Various (stakes in 170 MW solar PV) Various (40 MW solar PV)	Ontario U.S.	No advisor Credit Suisse	Looking to bring in equity partners for its pipeline (PFR, 2/28). Teasers went out about two weeks ago (PFR, 3/14).
Royal Dutch Shell	Shell Wind Energy (stakes in 1.1 GW)	U.S. and Europe	Morgan Stanley	Terms sheets are being negotiated with two investors (PFR, 2/7).
Stark Investments	Wolf's Hollow (730 MW Natural Gas)	Hood County, Texas	JPMorgan	Second round bids coming due (PFR, 11/1).
Tenaska Capital Management	Wolf Hills (250 MW Simple Cycle) Big Sandy (300 MW Simple Cycle)	Briston, Va. Kenova, W.Va.	Barclays Capital	The auction for the peakers is in the initial round (PFR, 2/14).
U.S. Power Generating Co.	Astoria Generating (1.28 GW Natural Gas) Gowanus (542 MW Fuel, oil and gas) Narrows (276 MW Fuel oil and gas)	New York City New York City New York City	Goldman Sachs	Looking to refinance the debt in tandem with the sale (PFR, 3/14)
Sithe Global Power	Goreway (50% stake in 880 MW CCGT)	Brampton, Ontario	No advisor	Chubu Electric Power Co. and Toyota Tsusho Corp. have bought out Sithe's remaining stake (PFR, 3/14).

Project Finance Deal Book

*Deal Book is a matrix of energy project finance deals that PFR is tracking in the energy sector. The entries below are of new deals or deals where there has been change in their parameters or status. To report updates or provide additional information on the status of financings, please call Senior Reporter **Brian Eckhouse** at (212) 224-3624 or e-mail beckhouse@iinews.com.*

Live Deals: North America

Sponsor	Project	Location	Lead(s)	Loan	Loan Amount	Tenor	Notes
Bloom Energy	Unidentified (Fuel Cell)	TBA	TBA	TBA	TBA	TBA	Sponsor reaches out to project banks (PFR, 2/28).
Brookfield Asset Management, Isolux Corsan	CREZ (300 Miles Transmission)	Texas	MUFJ, Santander, Scotia, SocGen	TBA	\$400-500M	TBA	Four tapped to finance project (PFR, 3/7).
Brookfield Renewable Power	Granite Renewable (99 MW Wind)	Coos County, N.H.	Citi, WestLB	TBA	TBA	TBA	Citi, WestLB begin pricing private placement (PFR, 3/21).
EDF EN Canada	Lac-Alfred (300 MW Wind)	La Matapédia et la Mitis, Quebec	TBA	TBA	TBA	TBA	Sponsor seeks initial pricing beneath 250 bps (PFR, 3/14).
	St. Isidore B (12 MW Solar PV)	Nation, Ontario	TBA	TBA	TBA	TBA	EDF hunts pricing starting at 225 bps (PFR, 3/14).
Edison Mission Energy	Various (362 MW Wind)	Neb., N.M., Texas	WestLB	TBA	\$260M	10-yr	Deal wraps with 9 participants (PFR, 3/7).
GE EFS, Exergy Development Group	Various (183 MW Wind)	Idaho	BoTM	TBA	TBA	15-18-yr	CoBank wraps second financing backing portfolio of farms (PFR, 3/21).
Independence Wind, Wagner Wind Energy	Record Hill) (50.6 MW Wind)	Oxford County, Maine	FFB	TBA	\$102M	TBA	Sponsors snag conditional federal loan (PFR, 3/14).
	Highland (117 MW MW)	Highland Plantation, Maine	TBA	TBA	TBA	TBA	Financing launch expected next year (PFR, 3/21).
LS Power	Cross Texas (230 Miles Transmission)	Texas	TBA	TBA	TBA	TBA	BNP Paribas among lenders eying financing (see story, page 3).
NRG	Roadrunner (20 MW Solar PV)	Santa Teresa, N.M.	TBA	TBA	TBA	TBA	Sponsor hunts financing backing farm (PFR, 3/7).
Odebrecht	Chaglla (406 MW Hydro)	Peru	BNP	TBA	\$650M	TBA	BNP approaches lenders about participating in financing (PFR, 3/14).
Radback Energy	Oakley (624 MW Gas)	Contra Costa County, Calif	BoTM, Crédit Agricole, ING, Scotia	TBA	TBA	TBA	RBS joins financing (PFR, 3/7).
Recurrent Energy	Various (170+ MW Solar)	Ontario	TBA	TBA	TBA	TBA	CIBC considered to lead bonds portion of deal (PFR, 2/7).

For a complete listing of the Project Finance Deal Book, please go to iipower.com.

FERC EYES

(continued from page 1)

The consideration comes in the wake of the U.S. **Department of Justice** and the **Federal Trade Commission** making changes to their guidelines for evaluating M&A deals last fall. FERC is independent of the DOJ and the FTC, but it strives to maintain consistency with the other agencies when it comes to M&A.

In its horizontal power market analysis, FERC looks at a merger's impact on rates, cross-subsidization, competition and regulation in addition to using a mathematical formula, the Herfindahl-Hirschman Index, which gauges market competition in several industries. FERC also analyzes market power share.

Under the proposed changes it would be more explicit that FERC would look at all areas of competition, including less statistical information like how companies in a region interact with each other, says **Roxann Henry**, partner at law firm **Dewey & LeBoeuf** in Washington, D.C. FERC would talk to market participants to flush out who sells power to whom and how working relationships shake out. It is also considering moving to a higher threshold under the HHI, which would increase FERC's

tolerance for deals that lead to less market competition, and would reflect the guidelines now in place at the DOJ and FTC.

FERC differs from the DOJ and FTC in that it must approve mergers while the other agencies have to decide to file suit to block mergers. The other agencies also perform their review processes largely behind closed doors, says **Raymond Wuslich**, partner at **Winston & Strawn**. If FERC wants to put more emphasis on behind-the-scenes activities then there is likely to be opposition from the industry as it is used to having an open process. "Although raising the thresholds would seem to make it easier to do deals, the FERC process may be more contentious if it allows parties to argue about qualitative issues outside their screens. It would be a big change," Wuslich says.

The changes made at the DOJ and FTC, which include more emphasis on talking to market participants and raising HHI thresholds, are "intended to reflect more of how agencies have actually gone about reviews of mergers and acquisitions," says Henry.

The inquiry, which will run for 60 days once the notice appears in the Federal Register, is expected to attract a host of comments

from utilities, power companies, consumer advocates and state utility commissions, says **Hugh Hilliard**, partner at **Dewey & LeBoeuf** in D.C. The guidelines at FERC will remain a framework as it can always use a more stringent approach as long as it states its reasons. The notice will be posted as early as next week.

Craig Cano, a spokesman for FERC in D.C., declined comment on the notice of inquiry, citing the agency's policy of not commenting on active cases. —*Holly Fletcher*

OVERSEAS ARRIVALS

(continued from page 1)

GCL is eyeing about \$100 million in debt for the Puerto Rico plant, with \$150 million to be lined up in tax equity. The sponsor inked a \$100 million-plus tax equity deal with **Wells Fargo** last year to help develop its pipeline, noted Chuang, declining to specify the size or project details. GCL also anticipates financing 29 MW of solar in California, with **Pacific Gas & Electric** or **Southern California Edison** being the likely offtakers.

Gestamp Solar is aiming to wrap two portfolio financings in the third quarter supporting 60-80 MW of photovoltaic in the Los Angeles area and California's Central Valley. The Spanish company, which has an outpost in San Francisco, is targeting 70% debt and tax equity backing the two deals. It anticipates taking out construction financings with tax equity and a term loan upon operation. Gestamp's California projects would be roughly 5 MW each and are expected to have offtake agreements with PG&E and SoCalEd. Negotiations with the offtakers are in the final stages, says a person familiar with the projects.

Meanwhile Belgian firm Enfinity is close to inking roughly \$140 million in debt and equity supporting a 33 MW plant it is developing in Quebec, said **Wim Goethals**, head of North American investment in Sacramento, Calif. Goethals declined to identify the sources of the funds. It is also looking to finance 20 MW of distributed solar in the U.S. this year. Enfinity expects to finance 60 MW of utility-scale and distributed generation next year in the U.S. It is looking to launch a fund, totaling roughly \$75 million, to raise tax equity for its projects, Goethals said on the conference sidelines.

The developers perceive the U.S. market as one of the world's largest solar markets—if not the most appealing—thanks to energy demand, good solar radiation, investment tax credit and strong underlying financing fundamentals. Goethals noted the lack of policy standardization across the U.S., but said the investment tax credit subsidy offers greater transparency and financial certainty than European countries with a feed-in tariff.

Officials or spokespeople at PG&E, PREPA, SoCalEd and Wells Fargo couldn't be reached for comment.

—*Brian Eckhouse*

EMERA, FIRST WIND

(continued from page 1)

looking for acquisitions of renewables, natural gas-fired plants and utilities to balance its greenhouse gas emissions, says an Emera spokeswoman. She declined to comment beyond that.

Emera has a 50% interest in the 600 MW Bear Swamp pumped-storage hydro facility in Massachusetts with **Brookfield Power**. It also owns Maine utility **Bangor Hydro**.

Infrastructure players have also looked at the First Wind fleet (PFR, 2/25) but a strategic partner would open the door to future collaboration on projects. Whether others are still in talks with First Wind could not be learned.

First Wind has been hunting for ways to raise capital since it shelved its initial public offering late last year. In addition to a stake sale of its operational assets in the Northeast, First Wind is working with **Morgan Stanley** to raise capital at the holding company level (PFR, 12/17). The process with CS and Macquarie started in December.

The First Wind fleet consists of three operating farms in Maine—the 42 MW Mars Hill, 57 MW Stetson and 26 MW Stetson II—and the 125 MW Cohocton and 20 MW Steel Winds in New York. The farms have offtakers. At least two projects, including the 50 MW Rollins project in Maine and a 15 MW expansion to Steel Winds, are expected to be operating later this year. Whether development projects that First Wind has in the region are included in the discussions couldn't be learned.

The identities of the individual bankers involved could not be learned. A First Wind spokesman declined to comment while an official and spokesmen for CS and RBC did not respond to inquiries. **Jill MacDonald**, manager of investor relations at Emera did not return a call.

—*H.F.*

Quote Of The Week

"The biggest thing is certainty. If you're further along in the [development] process... and you say, 'We're 80% baked,' that's more attractive." —**Uday Mathur**, principal of emerging clean technologies and energy procurement at **Pacific Gas & Electric**, on what the utility looks for when considering projects in a request for proposals (see story, page 2).

One Year Ago In Power Finance & Risk

US Power Generating Co. put subsidiary **Boston Generating** up for sale via **JPMorgan**. [**Constellation Energy Group** wrapped a \$1.1 billion purchase of **BostonGen** after a bankruptcy judge approved the transaction in January.]