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From: David Tobenkin
Sent: Monday, December 05, 2005 10:54 AM
To: Rich Heidorn; Aaron Siskind; Craig Deters; David Fishel; Demetra Anas; Donald Heydt; James Ballard; Jane Froehlich; Janet Jones; Janice Radel; Joel Cockrell; Linda Patterson
Cc: William Froehlich; Donald Heydt
Subject: Notes from December 2 Meeting with Dan Larcamp

Don asked me to send you some notes I made (with a couple helpful additions by Janet) regarding matters discussed in our meeting with Dan Larcamp on Friday.

Notes from 12/2/05 Southern Section 206 Team Meeting with Dan Larcamp re Status of Settlement Negotiations

Meeting with Larcamp

Attendees: William Froelich, Janet Jones, Dan Larcamp, David Tobenkin

50-50 chance case will settle with Calpine, at best, maybe worse now given woes of Calpine, especially because this matter far down on creditors list.

Biz people from Calpine, Southern, Coral will meet next week. It's possible they will request intervention of FERC's Rick Miles.

Possible Southern will make unilateral Section 205 filing to settle before the Commission if Calpine enters bankruptcy. Dan told Southern they should also seek settlement to include Coral given a Calpine-Coral joint defense agreement. Dan says he told them that he would support such an approach. However, Dan said that Southern is not yet definitely committed to going the 205 route. Dan told them that would be a good approach if Calpine and Coral support the filing. Dan said he told Southern he thought in that case that the Commission would enthusiastically support that approach if it was supported by an independent generator in the southeast.

Dan says his impression of Calpine, Coral is that they want guarantee of some firm product, but there was no indication that Southern was willing to agree to provide firm product. Also, they want Southern Power to agree not to sell to sister companies for a year or longer unless the product is subject to RFP consistent with Allegheny Power case standards. Dan thinks that that would resolve the Southern Power affiliate abuse prong of investigation.

Dan said that he told them that he hopes that if there were some deal, there would be a five-year lockout as to the parties.

He said that the support for this proceeding at the chairman level has vanished with Joe taking over from Pat. He said that Joe, unlike Pat, is not interested in the level-playing field approach because it's not statutory. Rather, he's only interested if we can show that there have been undue preferences. He said that Joe believes that concerns that are present for any vertical utility as such do not represent undue preferences.

Dan expressed great skepticism regarding our Section 206 case in general. He said that in his opinion, this case "at bottom is a native load one." He said that he hadn't heard that Calpine had any native load requirement. He said that he thought that the few preferences that we could show would be successfully countered by Southern's showing that the Commission allowed them to do this in filings. He also said that the case would be a tough one politically and that he strongly prefers settlement. He gave an example of one case in the old days where the Commission found Southern absolutely violated Commission rules with respect to the fuel adjustment clause. He said that Southern led a successful campaign that got customers to push for rejection of the refunds that the Commission sought. He said Southern thinks it has two votes on the Commission in its favor on this issue. He said that if that didn't work, Southern would likely apply political pressure.

He pressed us regarding whether we had found any clear violations against Southern. He rejected sharing of information and failure to operate independently between retail and wholesale where retail had access to transmission information and personnel as a "level-playing field" issue that was present for all vertically integrated utilities and not problematic.

However, he said that if it doesn't settle, and the parties are unwilling to make the required filing, it will be fully litigated. But he said that even if the case goes forward, the Chairman would not be eager to expedite it and it would likely languish through 2007.

We asked what will happen next in the negotiations. He said that it was his sense that if the parties were not making progress, the judge would act.

He suggested that with respect to the 206 Team, it might be good if we worked out a contingency plan with Southern to resume the case if settlement talks fail.

Dan said that he will let us know what he can about settlement negotiations. Dan said that he has been working with Ed Murrow and Marlene Stein on two discrete areas of negotiations, on matters relating to undue discrimination and formula rate aspects. He did not present himself as orchestrating the overall settlement process between the parties.

He said that he thought that the ISE doesn't comply with the formula rates precedent. He said that Rick Miles could help facilitate the parties coming to closure.

Bill asked Dan to keep up as up to date as possible, which Dan said he would do. Dan also declined an invitation by Bill for him to join the OAL team, stating that he thought the other parties would object to that.