

Energy Choice Matters

February 20, 2008

Duquesne PJM Exit Order Would Discriminate Against Retailers, Strategic Says

FERC's decision to make LSEs in Duquesne's zone responsible for capacity obligations through June 1, 2011 creates an anticompetitive situation that harms competitive retailers currently serving load in the territory, Strategic Energy told FERC (docket ER08-194).

By making LSEs continue to carry current capacity obligations, but exempting the Duquesne zone from the May 2008 RPM auction, FERC has created a situation where a new retailer could enter the Duquesne zone on June 1, 2008 and not have pay RPM charges, Strategic explained. These new entrants would have an unfair cost advantage over LSEs currently serving load who are burdened with ongoing capacity responsibilities.

Strategic urged FERC to relieve competitive retailers of their RPM obligations and allow them take service under the Midwest ISO tariff to prevent undue discrimination.

Should FERC not correct this problem, Strategic wants to make sure retailers only pay for capacity for load they actually serve when RPM is billed to account for customer churn.

Retailers also want to know what happens if Duquesne Light doesn't complete its exit from PJM before the 2011-12 RPM delivery year (Matters, 2/19/08).

FERC exempted Duquesne from the May 2008 RPM auction (and all future auctions) before a final ruling on all compliance filings needed for Duquesne to leave PJM, retailers noted.

FERC, "acted arbitrarily and capriciously by presuming that [Duquesne's] Compliance Filings will in fact ever be satisfactory, and that ultimately it will find on the basis of substantial evidence that [Duquesne's] withdrawal is just and reasonable," Reliant Energy argued.

"Unquestionably, the exclusion of Duquesne Zone Load from the May 2008 Auction creates tremendous uncertainty in the market," Reliant added.

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Generators See Little Substance in Md. PSC Wholesale Complaint

"The fact is Maryland does not have a right and should not expect to receive unlimited supplies of cheaper electricity from the other side of the [PJM] Interfaces," Dayton Power & Light told FERC in response to the Maryland PSC's complaint over certain generators exempt from offer caps (docket EL08-34).

The PSC has urged FERC to investigate the entire PJM market due to the potential for some unmitigated generators to exercise market power, citing reports from the RTO's market monitor. The PSC suggests retroactive refunds should market manipulation be found to have caused prices above the offer caps.

But generators were following PJM's tariff and refunds would not be appropriate, Dayton argued. At best, the PSC can suggest prospective changes to the offer caps.

The PSC leaps from claims one exempt generator exercised market power to an allegation all generators engaged in market manipulation, asking for a costly investigation and resettlement of the energy market and possibly RPM, Dayton explained.

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Cross Hudson Line Would be Merchant and Subject to Open Access, NJ Advocate Says

PSEG and Cross Hudson are trying to avoid competition for transmission service on a new line that would connect a PSEG power plant currently in PJM with a ConEd substation in the New York ISO, a host of stakeholders told FERC (EL08-35).

Cross Hudson won a New York Power Authority supply RFP and wants to build a “generator lead facility” to connect PSEG’s Bergen 2 unit, currently in PJM, to the NYISO to supply NYPA. PSEG would disconnect the unit from PJM in the process.

But PJM members have planned and paid for policies that have resulted in lower power prices relative to New York City, the New Jersey Division of Rate Counsel said.

“Not having contributed to PJM, New York should not now be allowed to partake of the benefits of careful long-term planning by NJ and PJM,” the counsel cautioned.

The rate counsel argued the line is not a “generator lead facility” but actually a 600-MW, 345-kV merchant transmission project that must have open access under Orders 888 and 889.

Linking two RTO regions with a 345 kV high-voltage transmission cable for the purposes of exploiting the regional energy market price differences is a “merchant transmission endeavor,” the rate counsel explained.

“The proposed 345 kV transmission cable would emanate from the service territory of a very large transmission provider, PSE&G, into one of the highest-priced electricity markets in the nation,” the counsel added.

Thus, the rate counsel expects that “many requests for transmission service would be made across a new open access transmission cable into the New York City area.”

But PSEG and Cross Hudson want to prevent other customers from using the line, the rate counsel noted, contrary to the non-discrimination precepts of Orders 888 and 889.

Exelon wants to make sure PJM members don’t pay for any needed grid upgrades or

other reliability needs caused by losing the PSEG power plant to the NYISO.

High Court Grills Western Utilities on Crisis Contracts

Supreme Court justices had harsh questions for Western utilities and ratepayers trying to void contracts signed at the height of the region’s power crisis, indicating the Court may overturn a Ninth Circuit ruling that threw the sanctity of power contracts into question.

The case also shows buyers’ remorse from a group of states that locked into long-term power contracts at the height of power prices and now wish they hadn’t, a consideration for policymakers in state’s weighing long-term procurements.

At issue are contracts signed among utilities in California, Washington and Nevada and suppliers including Morgan Stanley, Allegheny Energy and American Electric Power. The states were able to convince the Ninth Circuit that the contracts shouldn’t be valid because they were signed while manipulation was occurring in the market.

But several justices questioned whether simple volatility in the market equated to the alleged manipulation.

Justice David Souter noted the utilities’ argument would set a broad precedent that “no contracts are enforceable if they’re made during times of market volatility.”

“Didn’t your clients know that the market was chaotic at the time they entered into this long-term contract?” Justice Antonin Scalia asked the utilities’ lawyer. “Wasn’t that the very reason you entered into the long-term contract?”

Justices Samuel Alito and Anthony Kennedy also seemed skeptical of the utilities’ arguments. Chief Justice John Roberts and Justice Stephen Breyer recused themselves from the case.

Consensus on RM17 Quickly Deteriorating

Pepco urged the Maryland PSC to continue current payment process rules so that customers making partial payments keep

electric service for as long as possible, instead of implementing new rules in Rulemaking 17 (Matters, 2/19/08).

Although RM17 would not require utilities to purchase marketers' receivables (utilities could opt for prorated payments), Pepco took the opportunity to remind the PSC it cannot force utilities to implement POR since it is not a "regulated service." POR, Pepco argued, is a credit-like service available from the competitive market.

Pepco also does not want to bill supplier receivables for 90 days as would be required if the utility does not use POR. Pepco says the rule would actually hurt retailers by delaying the collection process and harm the ability of suppliers to collect arrearages.

The Office of the People's Counsel reiterated its view that now is the wrong time to address operational issues in the retail market since policymakers are reviewing whether competition should continue.

OPC sees POR as removing "an ordinary cost, and therefore risk, of doing business ('bad debt') from the competitive suppliers, and requiring residential consumers to shoulder the risk and bear the cost."

"In no other business world, except for a deregulated construct that places the promotion of retail competition above consumer rights and protections, could such a proposal receive serious consideration," OPC said.

OPC also wants the PSC to change a proposed exemption that allows telephonic contracting without a written contract in limited circumstances.

RM17 would permit suppliers who are exempt from the Telephone Solicitation Act to contract with residential consumers without a signed contract. These exemptions include companies that have a pre-existing business relationship with the consumer, including suppliers that are affiliates or subsidiaries of public utilities.

OPC sees such exemptions creating a competitive advantage for utility affiliates who qualify as having a pre-existing business relationship and wants a written contract for all solicitations.

Pepco wants the enrollment/drop window

to be 15 days instead of 12, since that's the timeline used in New York, Pennsylvania, Delaware and Virginia.

Pepco noted that an EDI transaction doesn't exist to handle enrollment error corrections and wants the rule delayed until the EDI working group creates the needed transaction sets.

Briefly:

Unitil Buys Small LDC

NiSource is selling LDC Northern Utilities and Granite State Gas Transmission to Unitil for \$160 million plus \$25 million in gas storage inventory and other working capital. Northern Utilities serves 52,000 customers in Maine and New Hampshire while Granite State operates 86 miles of FERC-regulated pipelines.

ICC Names ORMD Chief

The Illinois Commerce Commission named Torsten Clausen as Director of the newly created Office of Retail Market Development (ORMD) in a step that should help accelerate an already growing mass market. Clausen was most recently assistant to Commissioner Erin O'Connell-Diaz and worked with former Commissioner Kevin Wright and Chairman Richard Mathias as well. ORMD, modeled after the now defunct office at the NY PSC, will be primarily responsible for monitoring competitive conditions, identifying potential barriers to retail competition for all customer classes and for proposing solutions to overcome those barriers.

Enmax Going on Buying Spree

Calgary utility Enmax is buying gas producer Cordero Energy for C\$218 million as a means to lower utility bills. The deal gives Calgary a long-term natural gas supply for a tolling agreement with the Calgary Energy Centre, a former Calpine plant. Enmax said the acquisition will likely be the first of several, as it expands from retailing power and natural gas to production and wholesale supply. The utility sees owning upstream assets as a better deal for consumers than relying on the wholesale market.

Direct Cultivating Ontario Cities Losing Cheap Power

Direct Energy is signing up Ontario municipalities that are facing the expiration of the Ontario Energy Board's Regulated Price Plan in April 2008, exposing cities to the full cost of power. District Municipality of Muskoka signed a five-year, fixed-price contract with Direct that includes 10% Eco-Logo certified hydropower. Direct has also signed up three other towns in the region -- The Township of Georgian Bay, The Township of Muskoka Lakes and The Township of the Lake of Bays.

Maine Asks for Rehearing of Boralex MBR

The Maine PUC asked FERC for a rehearing of the Commission's decision to allow Boralex Industries to sell at market-based rates in the Northern Maine Independent System Administrator (NMISA). Northern Maine is part of Maritimes Control Area and isn't in ISO New England. It contains utility Maine Public Service. The PUC argued that FERC erred by finding the Maritimes Control Area to be a viable market when there are no comprehensive market rules for the power region and Canadian native load is given preference by New Brunswick Power (a Crown corporation), which FERC had considered a viable competitor to justify market-based rates. The PUC pointed to a letter from Constellation Energy Commodities Group which explained the "illiquid" nature of the NMISA and noted its "highly concentrated generation ownership."

BGE: LSEs Need More Time to Weigh Buying Solar RECs

Five business days is not enough time for load serving entities to evaluate whether to buy offered solar RECs, Baltimore Gas & Electric told the Maryland PSC (RM32). State law requires Maryland solar REC producers to first offer the RECs to Maryland customers before customers in other states, and proposed rules would meet that requirement by having RECs offered for five days on a PSC-approved website. But BGE says that's not nearly long enough for LSEs to decide whether to buy the RECs, especially considering a mandated 15-year agreement when buying RECs. BGE favors a 15 business day window.

Luminant Wants Ruling on Maximum Penalty

The PUCT's investigation into Luminant's alleged violation of market power rules can't proceed until the Commission clarifies what the maximum penalty would be, the generator said in an appeal again asking the PUCT to dismiss the case (docket 34061). The PUCT has recommended a \$170 million fine but Luminant claims the maximum that can be levied is \$610,000 due to a \$5,000/day limit on fines. The vast difference presents Luminant with different defense strategies and settlement approaches and thus a ruling on what the maximum fine would be is needed before full litigation ensues. Luminant also reiterated its view that Potomac Economics' definition of market power, which PUCT staff relied on in issuing a notice of violation, isn't tenable. The generator wants a ruling on the legality of the Potomac definition.

Brattle Finds Customer Savings from Dynamic Pricing

Properly designed dynamic pricing can yield substantial benefits to utilities and customers, a Brattle Group study commissioned by EEI found. Customers reduce their demand during critical peak periods between 8% and 50%, with 20% percent being a reasonable median number, Brattle reported. Customers that shift 20% of their load from critical peak periods lasting less than a hundred hours to off-peak periods can save approximately 6% on their monthly bills during the summer months, Brattle said.

GHRA, Tara Spar Over More Process

The Greater Houston Retail Association (GHRA) called RFIs from Tara Energy "irrelevant" and "duplicative" and called the discovery requests intimidating. The RFIs ask about the relationship between GHRA, its broker Public Utility Brokers and the individual complainants, and also seek info about customers' electric deals prior to and after being served by Tara. GHRA and Tara have been embroiled in a dispute over whether price changes were permitted under contracts GHRA members had with Tara in 2005 (docket 33967).

Reliant Moving Service Now on Web

Reliant Energy and Allconnect added a web option to their service which lets customers who move set up other home services — phone, cable/satellite TV, Internet, newspaper and/or home security — after establishing electric service with Reliant. Previously Reliant offered the service by phone.

EnergyWindow Hits Milestones

EnergyWindow has completed more than 10,000 transactions via its energy e-procurement system with customers buying over 11 bcf of natural gas and 8 billion kWhs electricity, the consultant announced yesterday. EnergyWindow claims to have saved customers \$138 million on \$816 million in energy supply costs but did not provide a baseline for comparison.

Duquesne PJM ... From 1

Market participants are left to assume that the auction will proceed without Duquesne and the load in its zone.

But, “they are challenged to make informed decisions about whether and how to participate in either the RPM or the bilateral Midwest ISO capacity market without having sufficient information as to precisely how or when [Duquesne’s] integration into Midwest ISO will occur,” Reliant noted.

Reliant sees a “a very real possibility that the Commission might still not approve [Duquesne’s] Compliance Filings for withdrawal from PJM, or that [Duquesne] might reconsider its commitment to withdraw by June 1, 2011, because of additional conditions required by the Commission when presented with the Compliance Filings.”

The Retail Energy Supply Association wants FERC to clarify that LSEs will be held harmless for any potential tariff violations should Duquesne decide to remain in PJM or its exit is delayed.

LSEs have no control whether Duquesne completes its exit on time, Reliant noted.

Retailers also urged FERC to make sure they have a seat at the table to discuss allowing LSEs to transfer capacity bought in RPM to satisfy MISO requirements.

Md. PSC Complaint ... From 1

“The Complaint is completely devoid of evidence that any exempt generator has, in fact, exercised market power and otherwise fails to provide any valid basis for eliminating the Exemptions,” EPSA added.

The PJM Industrial Customer Coalition and a group of state consumer advocates supported the PSC’s suggested relief.