Energy Choice Matters

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FERC Staff Finds No Manipulation in NYC ICAP Market

The behavior of KeySpan-Ravenswood, Astoria Generating Company Acquisitions, and Morgan Stanley Capital Group in the New York ISO ICAP market did not violate FERC or ISO prohibitions against market manipulation, FERC enforcement staff found after an investigation (IN08-2 & EL07-39).

Consumer groups and EDCs had complained that the prices in the New York City ICAP market did not decline despite the addition of 1,000 MW of new capacity for 2006, and remained at KeySpan's bid cap.

Their argument was bolstered when the ISO's market monitor concluded the in-city ICAP auctions were, "characterized by economic withholding of Capacity to exercise market power to the maximum extent allowed by the existing offer cap for the DGOs [Divested Generation Owners]." The market monitor noted that KeySpan lowered its sales by about the same amount as the added capacity because it continued to bid at its offer cap.

Consolidated Edison claimed that such economic withholding cost consumers $157 million for 2006.

But KeySpan's and Astoria's offering behaviors in the in-city ICAP market were consistent with the NYISO Services Tariff mitigation rules, FERC staff concluded.

Specifically, none of their offers ever exceeded applicable, seasonally adjusted bid caps. KeySpan and Astoria also offered all of their available mitigated capacity in the in-city ICAP auctions during each capability period, staff added, consistent with the requirements set forth in section 5.13.1 of the ISO's tariff.

The additional 1,000 MW of capacity was insufficient to cause KeySpan, based on its risk/

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FERC Boosts Mitigation in NYC ICAP Market

FERC accepted the New York ISO's proposals to strengthen mitigation of market power in the New York City ICAP market by creating a must-offer obligation for pivotal suppliers to prevent economic withholding (EL07-39).

The changes will prevent sellers with market power from artificially raising capacity prices and prevent net capacity purchasers from artificially depressing capacity prices with uneconomic generation, FERC found.

NYISO's proposal keeps the existing ICAP market framework and use of demand curves, and FERC ruled that discussions concerning a forward capacity market were not appropriate for this docket.

NYISO will apply mitigation measures to all in-City capacity that is controlled by any entity that possesses market power at the time of each ICAP Spot Market Auction (as measured by a pivotal supplier test) if the entity controls more than 500 MW of Unforced Capacity (UCAP).

Pivotal suppliers will be subjected to a must-offer requirement and offer cap. Under the must-offer requirement, to the extent that units subject to mitigation are not sold in the ISO's six-month strip auctions or monthly auctions, or certified against a load serving entity's requirement, they must be offered into the spot auction.

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Free Nighttime Power Weighed by Conn. Lawmakers

Connecticut residential customers could soon be getting free power during nighttime hours under a bill which would allow the DPUC to create a free nights program.

HB 5818 would direct the DPUC designate a retail commodity supplier that shall offer free power from June 15 through September 15 from 8 p.m. through 6 a.m. Customers would have to choose a time-of-use rate and receive a smart meter.

The goal is to encourage customers to use more power at off-peak times and lower system costs by using fewer peaking plants.

Chris Kallaher, Director of Government and Regulatory Affairs for Direct Energy Services, hailed the program as a "great" idea and explained it would not include a true-up paid by the participating customer or subsidies from other ratepayers.

Aside from encouraging direct participation in the plan, Kallaher expects the program will entice more customers to get smart meters, which they have a right to receive from their utility free of charge. The program would thus expand customers' understanding of electricity prices and their hourly fluctuations as well as opening other innovative product options to consumers once they have a smart meter installed.

Although retailers can offer free nights now, they have a hard time getting customers to call their utilities to get their smart meters, and the law would help lower that barrier, Kallaher noted.

Kallaher reported that Direct has modeled a free nights program in Texas and the idea has been examined at the "highest levels of our company."

"It's possible to do; it's not outrageous as you'd think," Kallaher reported.

Retailers Point to Failures of State Power Authorities

A state electric authority would not bring consumers the promised benefits of lower or more stable prices, competitive retailers told Connecticut lawmakers during a hearing on HB 5819.

The bill would create a state power authority to build generation and enter into long-term supply contracts for the state's EDCs.

But such a design would, "substantially harm ratepayers in the form of billions of dollars in additional costs imposed on them, the dampening of demand response and energy efficiency programs right at the moment they are beginning to hit their stride, and the elimination of retail competition and with it customer choice right at the moment that they are benefiting a significant majority of Connecticut businesses in a highly competitive New England regional economy," Hess Corporation Director of Regulatory Affairs Jay Kooper told lawmakers in written testimony.

States using energy authorities and long-term contracts have failed to achieve reliability and price stability goals, Kooper noted.

Long-term contracts are inflexible and prevent market adjustments in low fuel-cost time periods, he reminded, and transfer billions of dollars in risks to customers from generation investors.

Proponents of the bill ignore Long Island's history with public authorities, added Chris Kallaher, Director of Government and Regulatory Affairs for Direct Energy Services.

Customers of LIPA are frequently burdened with the highest rates of any service territory in the U.S., Kallaher pointed out.

Power authorities don't guarantee lower costs, Kallaher added, noting wholesale prices at the federal Bonneville Power Administration doubled from 1972-2001 while costs from other power sources fell. A 1999 GAO report on the BPA found federally run hydropower plants are generally less reliable in generating electricity than are nonfederal hydropower plants, Kallaher observed, noting that under authorities taxpayers, and not shareholders, assume the risks from inefficient and wasteful operations.

Proponents don't recognize the huge credit burdens in hundreds of millions of dollars in liquid collateral that a power authority would face just to participate in wholesale energy markets, he added.

United Illuminating urged that utilities be given the right to use bilateral contracts for default service supplies. Today's DPUC rules for procuring utility supplies are too prescriptive and inflexible, UI said.

Using long-term bilaterals needs to be investigated, UI added.

But Energy and Technology Chair John Fonfara, D, noted there are no free lunches.

Under his questioning, UI admitted that long-term contracts would include a premium, and that UI would only be interested in using long-term contracts if they were structured so risks are passed onto ratepayers.

Retailers Tout Municipal Aggregation But Say Conn. Bill Needs Work

Municipal aggregation would bring the benefits of competition to more customers, but a proposal before Connecticut lawmakers needs some work, retailers reported in a hearing on HB 5789.

The bill would let a city or group of cities create an opt-in aggregation pool for all customer classes.

While Dominion Retail supports municipal aggregation for residential and small C&I customers, HB 5789 has "serious deficiencies," including not limiting the aggregation to smaller customers, Dominion's Bill Barkas said.

The bill's creation of opt-in aggregation instead of an opt-out pool will also hamper the ability of the program to create an attractive market and lower prices for consumers, Barkas added.

Highly successful electric and gas aggregation programs in Ohio and Massachusetts have been opt-out, noted Chris Kallaher, Director of Government and Regulatory Affairs for Direct Energy Services.

Ohio customers in the pools have seen 5-21% savings in electricity costs, Kallaher reported.

Connecticut Light & Power compared the aggregation programs to government-sponsored slamming, but Kallaher dismissed this assertion.

Utilities' own standard service customers could equally be viewed as having been slammed, Kallaher pointed out, since when retail competition started customers remained utility commodity customers without an active choice.

Noting that municipal aggregation can serve as the gateway for increased customer access to competitive products, particularly for residential customers, Hess Corporation Director of Regulatory Affairs Jay Kooper urged lawmakers to not let the debate of opt-in versus opt-out delay of the benefits of municipal aggregation.

Barkas also criticized the "cumbersome" method for retailers to get customer information under the bill, and the fact that such information would not include customer account numbers.

CL&P, though, thinks that the bills' provisions for sharing customer information are against privacy rights

Dominion Urges Conn. To Shorten Marketer Referral Product, End TPVs

Dominion Retail urged Connecticut legislators to tweak the state's retail market by making telephonic enrollment easier and simplifying price comparisons between standard service and the marketer referral programs open to customers.

SB 573 would shorten the mandatory length of the product offered through the marketer referral programs from one year to six months. That would allow customers to compare prices directly with standard service offers from the utilities which change every six months, explained Dominion's Bill Barkas.

Telephonic enrollment is a "nightmare" for customers, Barkas added, noting that in the case of the marketer referral program, customers must go through three different processes: calling a utility, being transferred to a retailer for enrollment, and then transferring to a third-party verification to confirm enrollment.

SB 573 would remove the need for independent, third-party verification and simply subject the voice verification recording to an audit.

Connecticut Light and Power opposed the changes, and Energy and Technology Committee Steve Fontana, D, said he doesn't get complaints from constituents asking him to ease the enrollment process.

Conn. Generators Slam Repackaged Windfall Profits Tax

Generators urged Connecticut lawmakers to reject a “repackaged windfall profits tax” in HB 5783 which would mandate coal and nuclear generators enter into five to 15 year contracts with EDCs at cost of service plus a “reasonable” rate of return.

With FERC having exclusive jurisdiction over wholesale rates, PSEG Power’s Neil Brown pointed to “serious and substantial” legal issues with the plan supported by Rep. Vickie Nardello, D.

Nardello attacked a 57% ROE enjoyed by Dominion Resources and noted the success of Illinois lawmakers in extracting concessions from generators in the form of rate credits as the basis for the bill.

AARP’s Lance Johnson cited the state’s dysfunctional markets as necessitating the bill.

Dominion Resources Director of Northeast Government Affairs Dan Weekley noted that the merchant generator’s Millstone nuclear plant doesn’t play in ISO New England’s day-ahead market and is more than 90% sold for 2008, 50% sold for 2009 and 25% sold for 2010. Thus Millstone isn’t cherry picking high, spot-market prices caused by marginal gas-fired units.

Energy and Technology Committee Steve Fontana, D, countered that the bilateral prices Dominion gets are still struck in a world influenced by high day-ahead prices.

But Dominion hedges so far in advance, Weekley responded, that it can’t be certain of what those prices will be, nor can it influence them.

The Chamber of Commerce of Eastern Connecticut and the Connecticut Business and Industry Association, representing thousand of business consumers, both opposed the bill as sending the wrong message to the state’s business community. The associations, along with generators and a few lawmakers, noted the bill scares away potential investors who would build new generation to actually lower Connecticut’s power prices, and is thus counterproductive.

PJM Files Manipulation Complaint Against Power Edge, Affiliates

PJM on Friday formally submitted to FERC a market manipulation complaint against several affiliates of Tower Research Capital Investments, stemming from the default of affiliate Power Edge after losses in the financial transmission rights (FTR) market (EL08-44).

PJM alleged that the Tower affiliates manipulated the PJM FTR and day-ahead energy market, distorting energy prices and payments to FTR holders. PJM asked for profit disgorgements, civil penalties and that Tower affiliates be prohibited from participating in PJM.

PJM alleged collusion among affiliates to purchase offsetting FTR positions for the gain of one or more affiliates, while maintaining a large loss in another affiliate known to be unable to pay its obligations.

Through January 2008 activity, Power Edge’s default is approximately $37 million, and through the end of the 12 months for which its FTRs were purchased, the debt is expected to be over $50 million, PJM reported. Its affiliate, BJ Energy, has earned approximately $10.4 million in net revenues from its activities in PJM FTR markets for June 2007 through February 2008, much of which is attributable to the offsetting FTR positions it purchased, PJM claimed.

PJM also alleged that the affiliates used virtual bidding in the day-ahead energy market to intentionally increase congestion in order to enhance the financial value of one affiliate’s FTRs, while at the same time enlarging the known default of another affiliate’s counterflow FTR position.

During December 2007 and January 2008, BJ Energy submitted increment and decrement bids (virtual bids) in the day-ahead energy market which appear to have been purchased intentionally to increase congestion on FTR paths for which BJ Energy had purchased prevailing flow FTRs, PJM alleged. As a result, BJ Energy distorted LMP prices and unjustly profited on its FTR positions, the RTO claimed.

WMECO Dismisses Wholesaler's Claims

CONTINUING COVERAGE

Alternate Power Source, "has had its day in court – many days, in fact – and it has failed to convince anyone of its position," Western Massachusetts Electric Company told the Massachusetts DPU (08-3) in comments urging the Department to dismiss a complaint by Alternate Power Source over an eight-year old default service supply contract (Matters, 2/19/08).

A contract between WMECO and Alternate Power Source explicitly assigns congestion charges to Alternate Power Source, WMECO pointed out, citing Section 1.4 of the pact.

The Massachusetts Appeals Court has previously rejected Alternate Power Source's arguments and the wholesaler did not appeal to the state's Supreme Judicial Court (the period to appeal has long since expired). Thus, "there is now a final, binding judicial opinion on the issue," that prevents APS from relitigating the same issue again at the DPU, WMECO concluded. FERC has separately refused APS's complaint over the contract.

Briefly:

Foreign Marketers Praise PJM Guaranty Change

Direct Energy Services and SUEZ Energy North America applauded a proposed PJM tariff change that would permit the RTO to accept Corporate Guaranties from qualifying entities located in foreign countries in addition to Canada (ER08-570). Prior to the change, the only international Corporate Guaranty that PJM accepted was from Canadian firms, placing other international market participants at a financial disadvantage to domestic entities and Canadian entities, Direct and Suez noted. Non-Canadian foreign entities were forced to post other means of collateral, often in the form of cash. With the change, that cash can be freed to bring a higher level of trading and greater liquidity to the benefit of the entire market, Direct and Suez said.

FERC Can't Change WAPA Reactive Power Policy

FERC denied Calpine's requested rehearing of FERC's acceptance of a Western Area Power Administration rate that compensates affiliated generation for reactive power but does not pay IPPs for the service (EF06-5011-001). FERC reminded Calpine that WAPA is not a public utility under the Federal Power Act, and hence its rates are not subject to review under sections 205 and 206 of that act. FERC found that reviewing WAPA's reactive power decision was outside of the scope that the Dept. of Energy granted the Commission, noting FERC is prohibited from reviewing policy judgments and interpretations of laws made by the power generating agencies.

PUCT Asks for Smart Meter Comments

The PUCT has asked stakeholders for comments on advanced metering settlement in Project 34610. The staff asked REPs what percentage of ESI IDs would they like to have settled on a 15-minute basis at the full deployment of smart meters, overall and by customer class. What frequency do REPs expect to receive 15-minute settlement quality data if more frequently than monthly? What should ERCOT's future role be in the collection, storage, and provision of usage data, the staff asked. The staff wants to know whether the current methods of providing and transporting usage data to ERCOT and REPs (Texas SET 867-03 transactions) are adequate or feasible over the long term for large amounts of 15-minute interval data from smart meters, or whether other data provisions and transport methods should be explored (such as a common database from which ERCOT and REPs could pull data). Comments are due March 25.

SCE Signs Four PPAs with IPPs

Southern California Edison signed four long-term PPAs with winners from a competitive solicitation totaling 1,351 MW. The projects include a 550-MW deal with NRG Energy, a 479-MW pact with Edison Mission Group, a 273-MW contract with Competitive Power Ventures and a 49-MW deal with Wellhead Power.

FERC ICAP Probe … From 1

reward analysis, to change its offering strategy, FERC staff explained. Due to retirements and load growth, the 1,000 MW of additional capacity only came to a net gain of about 850 MW, staff observed. In addition, the resulting surplus from those additions is likely to be temporary, because the construction of one of the new units is tied to the retirement of an older steam unit, which is projected to occur in 2010.

KeySpan has generally offered its capacity at its bid cap, even if that meant some of its capacity went unsold, staff explained. KeySpan considers it a low-risk strategy and has concluded that any potential benefit from selling additional capacity at discounted prices is outweighed by the risk that its revenues would be reduced if its discounted capacity went unsold and clearing prices and overall revenues were lowered.

KeySpan determined that, even with the added 1,000 MW in 2006, it would still clear sufficient quantities at a high enough price to make bidding at its cap its optimal strategy. Under a discounting strategy, KeySpan risked lower clearing prices and, in turn, overall revenues, staff said.

Based on its review of KeySpan's modeling, FERC staff concluded that KeySpan's strategy of offering its capacity at its cap was, "economically rational and reasonable."

KeySpan's offering behavior did not constitute a fraud or fraudulent practice, staff reported.

FERC staff also assured the Commission that KeySpan's and Astoria's offering behaviors in the in-city ICAP market were unaffected by their swaps, and were done pursuant to legitimate business purposes.

KeySpan, Astoria, and Morgan Stanley did not engage in collusion to impair, obstruct, or defeat the functioning of the in-city ICAP market, staff added.

Morgan Stanley had entered into offsetting swaps with each generator, and the swap with KeySpan appeared, on its face, to give KeySpan an added incentive to continue its strategy at offering at its bid cap.

However, FERC staff did not find, "any evidence that KeySpan took any actions in the physical market that were any different from those that it would have taken in the absence of its swap," since it was already fully incentivized in the physical market to offer at its cap.

KeySpan had a, "legitimate business purpose for entering into its swap with Morgan Stanley," staff explained. KeySpan entered into the swap as a means to acquire additional revenues to offset expected revenue reductions due to the 2006 additions of capacity, which had the effect of depressing the amount of capacity sold by KeySpan.

KeySpan's annual net physical revenue in the in-city ICAP market in 2005 was approximately $250 million and in 2006 was $170 million. Thus, KeySpan's physical revenue shortfall from the additional 1,000 MW of capacity coming online in 2006 and causing more of its capacity to not clear was approximately $80 million.

KeySpan offset that shortfall, in part, with the swap, which produced almost $35 million in annual revenue.

Enforcement staff did not find any evidence that the swaps, when considered together, caused any harm on competition in the physical market.

New ICAP Mitigation … From 1

The offer cap will be the higher of:

(1) the price on the in-City market Demand Curve if all qualified UCAP clears the market, that is, the price resulting from all capacity being offered as price takers (the default mitigation reference level); or

(2) a market-clearing price that covers the net going forward costs of the marginal unit, that is, the costs it could avoid by being mothballed rather than staying in the market to provide capacity.

With the new mitigation measures in place, FERC authorized the ISO to remove the revenue cap and the ban on sales of Divested Generation Owners' capacity in bilateral contracts. The Commission observed that since mitigated suppliers will no longer be able to affect the market clearing price, those suppliers should receive the market clearing price like any other supplier.

FERC determined that NYISO's proposal will produce market clearing prices that cover suppliers' net going forward costs. NYISO's proposal would have resulted in a calculated reference level of $5.60-kW/month for the Summer 2007 ICAP in-City spot auction. Almost all suppliers (steam, combined cycle, and gas-fired combustion turbine units) will have negative net going forward costs, FERC found, and only oil-fired combustion turbine units will have positive net going forward costs ($0.60/kW-month).

FERC rejected KeySpan-Ravenswood's assertion the NYISO proposal was unreasonable because it will produce market clearing prices below net Cost of New Entry (CONE).

"While a capacity market may produce market clearing prices equal to or in excess of net CONE in certain market conditions, the NYC capacity market is currently enjoying a surplus of capacity," FERC reminded.

"This surplus should translate into market clearing prices that are below net CONE, and therefore we would expect that any just and reasonable proposal would produce market clearing prices that are below net CONE, as NYISO's proposal does," the Commission explained.

While the mitigation changes prevent economic withholding, there are ways a supplier could physically withhold its capacity in order to affect the size of the NYISO's calculation of all available UCAP and the subsequent mitigation reference level, FERC noted. These practices include suppliers retiring, mothballing, or de-rating their units. But FERC noted that retiring, mothballing, or de-rating a unit may be appropriate economic decisions under particular circumstances.

"We therefore cannot prescribe a per se rule to address physical withholding," FERC ruled. Instead it directed the NYISO to address certain concerns regarding withholding in tariff revisions in a compliance filing.

To prevent net capacity buyers from artificially depressing prices through uneconomic entry, FERC accepted the ISO's proposal to impose an offer floor equal to 75% of net CONE on new entry deemed uneconomic. The offer floor would typically last three years (longer for larger units) and new units subject to the floor would not be able to directly participate in bilateral transactions, or in strip or monthly auctions.

Generators had argued that the 1,000 MW of new capacity added by Consolidated Edison and the New York Power Authority in 2006 were uneconomic additions financed by ratepayers with the intent of, "artificially reducing capacity prices in NYC."

"While a strategy of investing in uneconomic entry and offering it into the capacity market at a low or zero price may seem to be good for customers in the short-run, it can inhibit new entry, and thereby raise price and harm reliability, in the long-run," FERC ruled.