

Energy Choice Matters

April 15, 2008

Direct Asks PSC to Reject NFG Filing With UBP Docket Now Open

Proposed standards on ESCO behavior offered by National Fuel Gas Distribution are preempted by the New York PSC's examination of Uniform Business Practices which would establish comprehensive marketing standards that would apply to ESCOs, Direct Energy argued in urging National Fuel to withdraw its tariff filing (08-G-0078, 07-M-1514, 98-M-1343).

Absent a voluntary withdrawal, Direct urged the Commission to reject NFG's proposal.

At a PSC technical conference, a National Fuel representative indicated that the utility intends to continue to pursue the proposed revisions to its tariff and operations manual to include rules for ESCO marketing, Direct noted.

"Regardless of the specific standards proposed, it would do great harm to the energy consumers of New York to allow utilities to adopt their own marketing standards on an ad hoc basis," Direct explained. Utility-specific policies would be confusing and would frustrate efficient Commission oversight.

Direct also encouraged the Commission to recognize, "the conflict inherent in establishing the utility as an independent enforcement agency with respect to marketing practices in its own service territory."

"While the competitive retail markets in New York are robust, the fact remains that bundled sales service from a local distribution company such as NFG is a major competitor to ESCO commodity service," Direct pointed out.

"Allowing a competitor to also act as police, judge and jury in the enforcement of marketing standards in a given service territory is fraught with the potential for abuse," Direct added.

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CAISO Says MMC Complaint Ignores Clear Tariff Language

A complaint by MMC Energy against the California ISO urges FERC, "to take action that would both sanction a distorted reading of the CAISO Tariff and undermine a NERC Regional Reliability Standard for the Western Interconnection," the California ISO argued in answering the complaint (EL08-46).

MMC had claimed the ISO was discriminating against its facilities by prohibiting them from bidding into the spinning reserves market (Matters, 3/14/08).

But the issue is clear, the ISO responded. All of the capacity at MMC's facilities does not meet the tariff language to qualify as spinning reserves.

"At its core, this case is one of tariff interpretation and one that can be disposed of based on the plain language of the CAISO Tariff," the ISO told FERC.

MMC's plants are "aggregated units" comprised of two generators, one of which is synchronized to the transmission grid and spinning, and one that remains off-line until needed.

Because the CAISO tariff defines "spinning reserve" as the "portion of unloaded synchronized capacity that is immediately responsive to system frequency," CAISO asserts that FERC must find that the portion of MMC's capacity that is off-line and not synchronized does not qualify as spinning reserve under the tariff.

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RESA: Link Future Review of Md. Small Commercial Cutoff to 9117 Ruling

The Maryland PSC could revisit the definition of a “small commercial” customer in any forthcoming order in Case 9117 (the PSC’s review of small customer SOS procurement), RESA suggested in the small customer rulemaking (RM34).

RESA favors lowering the current 25 kW threshold for small commercial customers to 5 kW to more closely align the class with the characteristics residential customers.

However, the PSC has noted the transition of small commercial customers to the 25 kW threshold set in Case 9064 (from varying utility-specific definitions) is set to finish by this summer, and the Commission appears to favor letting that transition end before changing the class’s definition.

If the Commission ultimately decides on that course, RESA suggested that Case 9117 could provide a framework for reviewing, in a future rulemaking proceeding, the appropriateness of the 25 kW threshold, since 9117 would determine SOS procurement for residential and small commercial customers.

N.Y. Utilities’ Role in Efficiency Hotly Contested

Parties in the New York energy efficiency portfolio standard case (07-M-0548) won’t have to address in reply briefs Consolidated Edison and Orange & Rockland proposals to expeditiously implement new utility energy efficiency programs, as the ALJs determined the plans were outside the scope of the proceeding’s current stage.

The ConEd utilities argued their plans were warranted by a March 20 ruling (Matters, 3/21/08), but the ALJs stressed the March 20 ruling clearly mandated that fast-track efficiency programs were to be already existing, proven cost-effective programs that were oversubscribed, not new proposals.

New York City, however, had argued in its initial brief that new utility programs, meeting cost-effective and other criteria, should be allowed to be included in fast-track plans given utilities’, “unmatched access to, and

knowledge of, their customers.”

Utility familiarity with customers is difficult if not impossible to replicate, New York City claimed, particularly when it comes to large customers, who often have long-standing relationships with utility account executives who can influence large users’ efficiency decisions.

Central Hudson Gas & Electric criticized the staff’s plan which would, “not just continue but expand the role of NYSERDA as the governmental incumbent monopoly supplier of energy efficiency products supported by ratepayer-funding.”

ConEd similarly attacked the staff proposal for requesting expanded NYSERDA programs without considering the need for such expansion and whether, “NYSERDA has any needs for funds particularly given the State’s proposal to provide NYSERDA with virtually all of the funds that result from the auction of greenhouse gas emission allowances.”

ConEd defended its suite of programs as superior to NYSERDA efforts, claiming its own sector-by-sector approach is specifically geared to its service territory. “This stands in sharp contrast to NYSERDA’s report, after ten years of energy efficiency program implementation, that it has been unable to effectively penetrate the Con Edison area market and that it needs to hire a consultant to determine a plan,” ConEd assailed.

ConEd also argued that, “Utilities can use their customer service departments and field personnel to market programs, can leverage vendor relationships and can use third parties such as ESCOs for both marketing and program delivery.”

NYSERDA took its fair shots at the utilities as well, arguing consideration of utility involvement was premature.

“The utilities’ access to end-use customers and the potential benefits of that access is simply one factor in a complicated appraisal of what program decisions will be in the best interests of the ratepayer,” NYSERDA cautioned.

“Based on submissions by the utilities to date in this and other proceedings, the utilities’ commitment to bring their marketplace advantages to bear on behalf of the ratepayers

is conditional on the provision of financial rewards to the utilities in an amount they independently deem sufficient,” NYSERDA pointed out.

“Many current efficiency programs are designed to foster development of a competitive industry for energy efficiency services. If utilities are provided profits to maintain these types of programs, those profits may actually provide a disincentive to ‘market transformation,’ as it may become more financially attractive for the utilities to continue to operate their efficiency programs, as opposed to fostering gradual market replacement of their efforts,” NYSERDA added.

NYSERDA suggested that utilities focus their efforts on enhancing the efficiency of the grid and wires, along with developing advanced meters and SmartGrid technologies.

Staff affirmed that, “an effective and efficient way for New York to achieve accelerated energy efficiency goals is to increase the role of utilities in the delivery of energy efficiency programs in a manner that is fully complementary with the roles of other market participants, including NYSERDA, regional, and national energy efficiency service and equipment providers.”

However, utilities must prove they can administer programs as efficiently and effectively a NYSERDA, staff added.

Staff also reiterated its view that a combination of projected impacts of improved building codes and appliance standards, planned activities of other state agencies and authorities, and Staff’s proposed bridging programs (if extended through 2015) could achieve the bulk of the 15 by 15 goal.

“It is simply uncertain at this point in the proceeding just how large the utilities’ (or other program administrators’) role in program administration will ultimately become,” staff argued.

Staff recommended the PSC approve an EEPS surcharge for electric utilities of \$137.54 million in 2008 and \$267.82 million in 2009, and for gas utilities of \$19.92 million in 2008 and \$40.69 million in 2009.

Briefly:

Energy Buyer Picked to Head Illinois Power Agency

Illinois Gov. Rod Blagojevich, D, tapped Mark Pruitt as the first executive director of the new Illinois Power Agency, subject to Senate confirmation. Through use of portfolio management, Pruitt will have the unenviable position of trying to beat the market and procure lower SOS rates that what were available in a 2006 descending clock wholesale auction. Pruitt most recently managed energy procurement for state agencies and local municipalities at Chicago’s Energy Resources Center at the University of Illinois. The legislation creating the power authority laid out onerous qualifications for the agency’s head, including very restrictive rules for past ties to utilities, which had made finding a viable candidate challenging. Pruitt saved state agencies as much as a 29% over default service rates while procuring for the agencies.

Gexa Wary of CL&P Billing Conversion

Connecticut Light and Power’s recent billing problems which caused some 2,000 customers to not be sent a January bill, “is not simply limited to billing inaccuracy,” Gexa Energy told the DPUC (08-02-06). The problems impact the competitive market in general, Gexa cautioned, raising concerns that a summer conversion to a new billing system may restrict enrollment and impact EDI testing. CL&P also filed in the docket an account list showing all the suppliers impacted by the error, how many accounts they have affected (Matters, 4/7/08), and the usage for those accounts, which may provide some competitive intelligence. Currently, the filing is redacted to not disclose the account name and number, subject to CL&P’s motion for a protective order, but the DPUC had earlier directed the information be filed publicly. CL&P cautioned that including customer names and account numbers, plus usage and total billings, would allow suppliers to determine the rate an individual customer paid and allow competitors to contact customers to solicit them.

Ohio House Electricity Bill Stalled

After hearing only one witness on a House electricity bill that would preserve retail competition, the House Public Utilities Committee recessed with Committee Chairman John Hagan, R, indicating GOP leadership would introduce a substitute bill later in the day. An alternate bill was not forthcoming, which will likely delay an expected Tuesday vote on deregulation legislation. House Speaker Jon Husted, who introduced the more market-friendly bill last week (Matters, 4/14/08) was negotiating with the governor's staff late into the evening.

NYISO Moves to Give Demand Response Equal Access to Provide Ancillary Services

Although load was generally satisfied with a New York ISO compliance filing that would give demand side resources access to the ancillary services markets comparable to that of generation (ER04-230-023), Nucor Steel urged FERC to direct NYISO to allow batch load to be able to provide operating reserves. A batch load process is a cyclical production process that uses energy around the clock but at regular intervals uses little or zero electricity for short periods. Batch load wasn't originally allowed to participate in PJM's synchronized reserves market but industrials successfully argued batch load could reliably provide synchronized reserves. Batch load can comply by either decreasing power use or not starting the next cycle of increased power consumption, Nucor explained.

AGs to Talk Energy Deregulation

Energy deregulation will be a topic at the first Energy Summit for Attorneys General, organized by the National Association of Attorneys General. The May 5-7 event, in Idaho, will include a panel titled "From Regulation to Deregulation" with deputy AGs and staffers from the Idaho, California, and Virginia AG offices. A Southern Company representative will also speak on "America's Energy Demands & Realities."

EPSA Cites Cost Overruns in IOU, Muni Generation

EPSA catalogued cost overruns at eight

regulated IOUs or municipals in its latest piece showing vertically integrated states are not immune from higher power costs which are typically blamed on competition. Among the plants cited by EPSA were those built by AEP SWEPCO, Duke Energy Carolinas, American Municipal Power-Ohio, Sierra Pacific Resources, Kansas City Power & Light, Entergy, Sunflower Electric Energy and Progress Energy Florida. EPSA also noted dozens of IOU plants cancelled or delayed due to cost overruns, including proposals from Tampa Electric, Long Island Power Authority and Xcel Energy.

Pepco Energy Services Extends Trump Relationship

Pepco Energy Services subsidiary Thermal Energy Limited Partnership I extended a contract to develop, design and operate additional energy systems for Trump Organization's Taj Mahal Casino in Atlantic City, N.J., including HVAC systems for a new hotel tower. Pepco Energy Services has been operating the heating and cooling facilities at Taj Mahal since 1997 and the extension goes until 2027.

Direct-NFG ... From 1

It would also burden the Commission with policing disputes over interpretations of standards between utilities and ESCOs. And while the PSC used to have a forum for ESCOs and utilities to talk things out, that office has since been eradicated.

CAISO-MMC ... From 1

"Essentially, MMC is asking for the right to continue in perpetuity its highly profitable, but unlawful practice of bidding off-line, unsynchronized capacity into the Spinning Reserve market, while other CAISO market participants are forbidden from doing so," CAISO claimed.

The tariff, by limiting spinning reserves to the "portion" of capacity that meets the tariff's criteria, clearly contemplates that a generation resource might have some capacity that qualifies and some that does not, such as MMC's aggregated units, the ISO noted.

MMC's units, which are off-line but capable of being synchronized and ramping to a specified load in 10 minutes, fit, "squarely within the definition of Non-Spinning Reserve," the ISO observed.

Although the ISO concedes some low-level staffers did indicate MMC could bid into the spinning reserves market, FERC precedent clearly holds that clear tariff language supersedes communications between ISO staff and stakeholders (NYISO v. Astoria Energy). The Filed Rate Doctrine also prohibits the ISO from departing from its tariff even if staff communicated something contradictory.

CAISO also explained to FERC that MMC's off-line capacity should not be grandfathered as spinning reserves.

Allowing MMC to bid off-line, non-synchronized capacity into the CAISO spinning reserve market would put the CAISO tariff into conflict with the Commission's mandatory reliability standards, the ISO noted.

Grandfathering, "would put other Spinning Reserve providers at a competitive disadvantage," the ISO cautioned.

"For MMC to get this enhanced revenue stream would provide an undue preference in its favor. Moreover, other providers would be financially disadvantaged for having interpreted the Tariff correctly. Meanwhile MMC – which profited from a misinterpretation of the Tariff in 2006 and 2007 – would be rewarded for its lack of diligence. This result simply could not be upheld as just and reasonable," the ISO argued.

Although the ISO did certify three MMC facilities as eligible to provide spinning reserves, the mere fact that those facilities were certified does not mean that they may legitimately bid and be paid for spinning reserve capacity that is off-line and not synchronized, the ISO argued.

The ISO also informed MMC prior to the first certification that the ISO was reviewing the question of whether MMC's operating configuration met tariff requirements.

CAISO dismissed MMC's discrimination claims as "nonsense," noting that MMC has failed to allege even a single example of the

CAISO allowing another generator doing what MMC seeks to do in bidding off-line capacity into the spinning reserve market.

The ISO defended its No Pay Charges to rescind spinning reserve payments to MMC since MMC's units failed to meet the applicable Ancillary Service requirements and provide the service that had been procured by the CAISO.