

Energy Choice Matters

April 17, 2008

FERC Mostly Accepts NYISO Long-Term Grid Rights Plan

FERC approved the bulk of the New York ISO's long-term firm transmission rights (LTTR) proposal but the ISO will have to report back with a few modifications to comply with all of FERC's guidelines for long-term transmission rights (ER07-521).

A key component of the ISO's plan is limiting fixed priced Transmission Congestion Contracts (TCCs) to the historical uses of LSEs with expired or expiring grandfathered transmission rights.

FERC found that approach reasonable in the short-term since no LSE other than the municipal systems and cooperatives has expressed an interest in obtaining LTTRs in the proceeding. Therefore FERC is satisfied that the LSEs that have an immediate interest in obtaining LTTRs will be able to obtain them under NYISO's proposal for fixed price TCCs.

However, "limiting the availability of LTTRs to this small subset of market participants does not meet the requirements of the Final Rule," on LTTRs for the longer term, FERC concluded.

To full comply with FERC's LTTR rule, NYISO must expand the availability of LTTRs to LSEs that seek to use non-historic points of injection and withdrawal, FERC held. NYISO must submit a compliance filing to implement that requirement no later than two years from the date of the order.

Such rights may take the form of fixed price TCCs, or other forms of LTTRs that meet the requirements of FERC guidelines and are implemented in a non-discriminatory manner, the Commission explained.

The ISO may establish reasonable priorities for the allocation of those rights, such as a preference for LSEs with long-term power supply arrangements, and may propose reasonable limits on the amount of existing transmission capacity used to support the rights, FERC added.

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Penalties for Declined Dispatch Aren't a Substitute for Anti-Manipulation Rules, CAISO Says

The California ISO opposes Mirant's plea to increase the threshold which triggers penalties for "declined" dispatches that the ISO has proposed as part of its Market Redesign and Technology Upgrade (ER08-628).

The ISO proposal (Matters, 3/24/08) will charge Scheduling Coordinators (SCs) who fail to deliver on bids for imports and for exports that have been accepted in the CAISO's real-time markets for energy (in other words, SCs who "decline" dispatch). Since there could be legitimate reasons for such declines, an SC would be assessed charges only if its declines during a month exceed both of two thresholds – 300 MWh and 10% of the total quantity of its accepted pre-dispatched bids.

Mirant protested that those limits injected unacceptable risk into the marketplace, since marketers do not know the magnitude of their declines until the month is over, and by that time it is too late to change their behavior. Mirant urged FERC to raise the threshold to 500 MWh to ensure market liquidity.

In an answer, the ISO disagreed with Mirant's assertions that SCs don't know the magnitude their declines until the month is over.

"Although it is certainly true that a Scheduling Coordinator would not know its total level of declines for a month until the end of that month, it would certainly be in a position to monitor its

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TransGlobe Energy Gas Assets Are Latest Direct Energy Buy

Direct Energy continued its buying spree yesterday, this time going back to upstream assets, which are one of its top focuses to further integrate its operations.

Direct is acquiring the Canadian based oil and gas assets of TransGlobe Energy for total cash consideration of C\$56.7 million, which will boost Direct's reserves by at least 15 Bcfe.

Direct has been increasing its level of gas reserves to supply its Canadian and northeastern U. S. retail customers.

The assets acquired are adjacent to Direct's current gas portfolio in Alberta and include a production base of 8.7 Mmcf per day (of which 75% is natural gas) and 50,000 acres of land with development potential.

Previously, Direct had expanded its upstream reach by buying Rockyview Energy last year. It opened this quarter by buying Strategic Energy to create a powerhouse large C&I retailer.

Calpine Defends Broad Review of CAISO ICPM

Calpine's motion to lodge California ISO comments from a California PUC rulemaking into a FERC docket on the ISO's Interim Capacity Procurement Mechanism (ICPM), "seems to have struck a nerve with other parties that do not want the Commission to consider California capacity procurement in full and proper context," Calpine asserted in an answer (ER08-556).

Calpine claimed, "the answers of the CAISO, the CPUC, and PG&E seek to put the CAISO's filing of the proposed Interim Capacity Procurement Mechanism (the 'ICPM') in a closed box, as a temporary, interim, and backstop mechanism, undeserving of Commission scrutiny of how the ICPM would perpetuate unduly discriminatory capacity procurement and forestall development of market-based price signals needed to assure just and reasonable compensation."

"However, the Commission's statutory inquiry is not lessened by labeling a tariff 'interim,' nor need that inquiry interfere with

the CPUC's on-going Resource Adequacy ('RA') rulemaking proceeding," Calpine argued.

The PUC and CAISO had blasted Calpine's motion to lodge the CAISO comments from a PUC rulemaking on resource adequacy as an irrelevant attack on prior FERC orders to defer to state authorities' determination of long-term resource adequacy requirements, and a "backdoor" attempt to reverse FERC's prior finding that MRTU is just and reasonable even without a centralized capacity market (Matters, 4/3/08).

Calpine responded by arguing its motion to lodge did not usurp state jurisdiction, but rather allows the Commission to consider the full context of capacity procurement in California and, in particular, "that the absence of a market mechanism for capacity procurement renders the backstop capacity procurement, for however long a period, unduly discriminatory and unjust and unreasonable."

Rebutting arguments that the ICPM will be an "interim" mechanism that sunsets in 2010, Calpine cautioned that, "there can be no assurance that the CAISO will not find reason to extend the ICPM, just as the RCST [Reliability Capacity Services Tariff] has been extended, if California's RA program has not advanced to a market-based mechanism by that date."

Thus, viewing the ICPM in a larger context, facilitated by lodging the CAISO comments on long-term resource adequacy from the PUC docket, is appropriate, Calpine insisted.

FPL Wants Opportunity to Testify on CREZ Wind Study

FPL Energy and its subsidiary Lone Star Transmission objected to a procedural schedule regarding transmission needed to access Texas's Competitive Renewable Energy Zones (CREZs) because they believe the schedule does not permit development a full record (33672).

The schedule adopted in Order No. 38 errs by denying all of the more than 70 parties except one, ERCOT, any opportunity to offer testimony that is needed to address cost-

effective transmission solutions and additional cost savings beyond those identified in the CREZ Transmission Optimization (CTO) Study (Matters, 4/3/08), the FPL companies said.

The schedule also wrongly determined that the Ancillary Services Study is outside the scope of the case, “depriving the Commission of any ability to consider that report in adopting findings of fact in this case - even though that study is now complete and cost and reliability are key issues in the case,” FPL argued.

The adopted schedule is, “so legally flawed as to invite judicial reversal or injunction, needlessly imperiling the regulatory certainty essential to accomplish the benefits of the CREZ process,” claimed FPL.

FPL favors a schedule which includes prefiled direct and rebuttal testimony (rather than simple statements of position) while still preserving the Commission’s preference for a one-day hearing and final order by June.

ARM Intervenes in Oncor Rebate Docket

The Alliance for Retail Markets intervened in Oncor’s compliance filing docket (35546) concerning stipulated performance standards that were established as part of the leveraged buyout of TXU.

As previously reported (Matters, 4/8/08), Oncor intends to pass through rebates relating to service quality and customer service standards to customers through REPs, similar to how Oncor is paying out its one-time \$72 million credit.

That has piqued the interest of ARM since only REPs agreeing to pass the credit completely through to customers will receive it.

In the Oncor-TEF case (34077), ARM raised its concern that since the rebates are actually rates under PURA, Oncor cannot distribute them in a discriminatory manner by allowing only some REPs to receive them.

ARM withdrew that argument after getting Oncor to pass the \$72 million credit to REPs in a Texas SET to ease REPs’ backoffice burden.

Oncor will use a Texas SET to flow the performance standard credits to REPs as well.

The PUCT in its final order in 34077

concluded Oncor’s rebate policy was not discriminatory (Matters, 2/25/08).

Briefly:

Ohio House Bill Put Off Until Next Week

A House vote on an Ohio electric deregulation bill (Matters, 4/15/08) has been pushed to next week as sides continue negotiations. The latest obstacle is a requirement from Gov. Ted Strickland, D, that any departure from his preferred approach incorporate protections to prevent “excessive earnings” at utilities, or alternatively subjects rates to “just and reasonable” standards.

Constellation NewEnergy Joins Ontario Demand Response Party

Constellation NewEnergy is the latest player to offer a demand response product to commercial, industrial and governmental electricity customers in Ontario. NewEnergy’s NewResponse demand response program is to provide the Ontario Power Authority with 25 MW of demand resources, under the OPA’s DR3 Program. Participants earn a recurring availability payment for committing to the program plus an energy utilization payment when responding to instructions to reduce load. Energy Curtailment Specialists and EnerNOC recently entered the Ontario market as well.

PPL Buys Tolling Pact from Bear Stearns

PPL EnergyPlus is acquiring a long-term tolling agreement from BE Ironwood LLC, a Bear Stearns subsidiary, which will give it the rights to the capacity and energy of AES’s 664 MW, gas-fired power plant in Lebanon, Pa., continuing the wholesaler’s strategic expansion of its generating capacity. The tolling pact runs through December 2021.

TXU Sets Low-Income Advisory Board

TXU Energy named the members of its previously-announced Low Income Advisory Committee, which is to help TXU identify challenges faced by low-income customers and advise TXU on programs to assist customers in overcoming those challenges. We think it’s noteworthy considering some form of low-income consumer protection

(including stricter disconnect prohibitions and possible other measures) will likely gain momentum in the 2009 legislative session, unless prices fall dramatically. The 10-member committee is to meet four times a year and includes Texas ROSE Executive Director Carol Biedrzycki, Texas Legal Services Executive Director Randy Chapman, and Texas Association of Community Action Agencies Executive Director Stella Rodriguez. Previously, TXU committed \$25 million annually for the next five years to provide an approximate 10% discount for participating low-income customers above the discount provided by the System Benefit Fund. The REP also allocated \$5 million annually for five years to its TXU Energy Aid assistance program.

New Aggregator Approved in Conn., Another Nears License

The Connecticut DPUC granted Axcess Energy Group an aggregator license to pool commercial, industrial, municipal and governmental customers (08-02-09, Matters, 4/10/08). The Department, in a draft, would also award Collective Energy an aggregator license to serve residential, commercial, industrial, municipal and governmental customers (08-03-15). Collective intends to focus on the, "under represented residential and small business markets" (Matters, 3/21/08).

NYISO Grid Rights ... From 1

The Commission also found NYISO's proposal to implement Auction Allocation Rights (AARs) does not meet the requirements of FERC's final rule because it effectively requires an LSE to submit a winning bid in an auction to acquire LTTRs and, as a result, exposes the LSE to unacceptable price risk. But FERC will allow the proposal as a supplement if stakeholders agree to it.

NYISO proposed to allocate AARs to LSEs, which may then convert them into TCCs with a one-year duration by paying the market clearing price as determined in an auction for TCCs with the same points of injection and withdrawal. While the NYSIO argued that such a framework does not require the LSE to

win, or even to bid into, the TCC auction, the Commission disagreed.

"In order to determine a market clearing price for its TCCs, an LSE must participate in the auction as a price taker, which is equivalent to requiring the LSE to submit a bid with no upper bound," FERC reasoned.

Having to participate in the auction in this manner requires the LSE to commit to purchase the TCCs at a price that is not known at the time of the purchase commitment, FERC added.

Nevertheless, the proposal is just and reasonable if it supplements an LTTR mechanism that does not require auction participation, FERC noted.

The ISO does meet that requirement through its approach to allocating fixed price TCCs, FERC explained.

Thus FERC will allow the ISO to retain the AAR plan, upon stakeholder agreement, since no market participant would be required to purchase AARs and offering them on an optional basis would be beneficial.

The Commission withheld making a determination regarding NYISO's provisions for granting LTTRs for incremental transmission upgrades pending a further compliance filing, since the ISO has not yet developed specific procedures for incremental upgrades and intends to initiate a stakeholder process.

Declined Dispatch... From 1

declines on an ongoing basis, and therefore, would know as the end of each month approaches where it stood in relation to the threshold," the ISO argued.

The CAISO also clarified that the, "purpose of the proposed amendment is not to give Scheduling Coordinators a free pass to decline pre-dispatches at whim, but rather to provide a safe harbor so that Scheduling Coordinators are not penalized for declines that occur due to circumstances beyond their control."

Thus the ISO recommended that even though SCs that exceed the decline threshold will pay a specific penalty, SCs should also remain subject to the full range of anti-manipulation rules based on abusive or

fraudulent declines.

Suppliers should not be permitted to decline pre-dispatches for solely economic consequences at a rate near the threshold exemption, the ISO argued.