Energy Choice Matters

April 21, 2008

PJM Can Grant Transmission Rights for Duquesne Zone Generation RPM Participation

Although current generators in the Duquesne zone are appropriately considered external resources for the upcoming May 2008 RPM auction (Matters, 3/24/08), FERC set a clear path that will let the generators reserve needed transmission and compete as external resources (ER08-194).

FERC found that PJM may enter into point-to-point transmission service arrangements with the Duquesne zone generators, thus satisfying the requirements applicable to the 2011-12 delivery year.

Although Section 10 of the Reliability Assurance Agreement does not expressly address the status of generators that may be located within PJM as of the auction date but outside PJM as of the delivery year, FERC concluded the "logical interpretation" in that the generators are external resources for the 2011-12 delivery year.

Schedule 10 requires that external resources have firm transmission service to the metered boundaries of the PJM region. Schedule 10, however, does not specify whether such transmission service is a prerequisite for bidding into the RPM auction, FERC observed.

"Under the circumstances presented here, we view this requirement as applicable to the delivery year, not as a prerequisite for bidding into the auction," the Commission ruled.

PJM has the tariff authority to contract for firm point-to-point service for the 2011-12 delivery year for those generators that wish to contract for such service prior to the May 2008 auction, FERC affirmed.

"PJM is the current administrator of the OATT for the Duquesne zone and its tariff requires that it sell firm point-to-point service. Order Nos. 888 and 890 also require transmission providers to offer firm point-to-point service with a future reservation date," FERC reasoned.

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Disclosure Box Proposed for N.Y. ESCO Contracts

New York ESCOs should be required to develop disclosure boxes with prices and termination fee information, the Consumer Protection Board and Attorney General argued in the PSC's review of the Uniform Business Practices (07-M-1514 et. al., Matters, 4/18/08).

CPB wants the PSC to develop something similar to the "Schumer Box" which now accompanies all credit card offers and highlights the most salient parts of the offer that may otherwise be buried in legalese (something we've referenced before in terms of disclosure labels and price transparency, see Commentary, 2/26/08).

CPB's proposed box would include the price, whether the price is fixed or variable, the term, whether there is a termination fee and its amount, and the term of the grace period in which the customer can cancel the agreement before having to pay the exit fee.

The AG suggested also including information on renewal provisions, the role of the LDC and whether savings are guaranteed. The AG would require ESCOs to get a customer to initial the box for the contract to be authorized.

CPB would also not allow a termination fee to be imposed on customers if the ESCO could break the contract without penalty. CPB complained of contracts that allow for unilateral termination rights in favor of the ESCO for products that are ostensibly for terms of a year or longer at a fixed price.

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FTC Nudges FERC on Dynamic Pricing, Suggests For-Profit RTOs

The Federal Trade Commission suggested making RTOs for-profit transcos, or adding strong incentives for managers to be responsive to customer concerns if the RTO remains non-profit, in comments on FERC's organized market NOPR (AD07-7 et. al.).

The FTC thinks the "excessive cost" and lack of customer responsiveness in RTOs stems from their non-profit status.

The trade agency also argued that some form of dynamic pricing should be the default service plan for retail service if the social benefits of dynamic pricing exceed implementation costs. "[T]raditional retail price regulation also increases the volatility of wholesale prices, increases the risk of blackouts and brownouts, and raises average costs," FTC reasoned.

Since customers may have different preferences on the level of volatility they can stomach, default service customers should be allowed to buy blocks of power in advance at the average price, FTC suggested, and only pay the dynamic price on the margin.

The FTC also pointed out that, according to their research and experience, "smart, well-intentioned people with legal, engineering or policy analytic expertise often write materials that consumers have difficulty understanding."

Utilities should not be allowed to stymie competition from on-site generation by setting unrealistic standby generation service prices based on worst-case scenarios, the FTC urged.

FirstEnergy cautioned FERC that, "it is not clear that the RTOs can play an effective role in facilitating long-term bilateral contracts."

"The unwillingness of buyers and sellers to come together on pricing for such contracts is the fundamental problem. From the standpoint of a regulated utility that purchases all or a portion of its generation supply to serve retail customers, lack of assurance of state retail recovery – including, but not limited to existing generation rate caps – remain a source of uncertainty," FirstEnergy pointed out.

"In addition, shrinking reserve margins in the various reliability council regions may cause sellers to hold out for the promise of short term profits driven by scarcity pricing," FirstEnergy reasoned.

"Recent court decisions on the Mobile-Sierra doctrine add uncertainty," added FirstEnergy.

Regardless, FirstEnergy doesn't believe RTOs need to assume any additional role in long-term contracting, noting that market intelligence is already provided by private companies.

FirstEnergy also opposes, "the notion that particular constituencies of stakeholders should be given preferential rights or privileges under the guise of responsiveness," noting FERC has rejected giving the Organization of MISO States preferential filing and review rights over certain MISO matters.

"FirstEnergy believes that such attempts by state commissions to elevate their stakeholder status to advice and approval over RTO initiatives represents a serious threat to the independence of RTOs."

DPUC Sets Interim Rule for Back Billing By CL&P, Retailers

Due to concerns about financial problems for customers, Connecticut Light & Power and competitive retailers that would arise by delaying action on billing some 2,000 CL&P customers who had gone three months without receiving a bill, the DPUC in an interim order directed the utility and suppliers to, as soon as possible, issue bills to customers and begin collecting repayment for any consumption that has not been billed as a result of the billing problem (Matters, 4/16/08).

The order was directed to CL&P, Sempra Energy Solutions, Suez Energy Resources NA, Strategic Energy, Hess Corporation, Glacial Energy, Constellation NewEnergy, ConEdison Solutions, Integrys Energy Services, and TransCanada Power Marketing (08-02-06).

For the interim, the companies are to distribute each customer's outstanding balance over a period of not less than 12 months. No monthly payment can exceed 50% of the average amount that the company charged such customer for each billing period over the previous 12-month period.

Final back billing rules are to be issued in a later final decision, perhaps coming in June.

The companies are to submit sample billing statements and correspondence to the DPUC at least five days before sending them to customers for Department approval.

Each company is to submit a monthly compliance report, with the first due by May 30. The report is to include, for each affected customer (using a generic customer identification system to omit the customer's name, address and account number),

(a) the customer's total outstanding balance resulting from the subject billing problem;

(b) the customer's average monthly bill amount for the period between December 2006 and December 2007; and

(c) the repayment amount required by the Company for the month of the report.

NSTAR Tells DPU It Thinks PPM Extension May Be the Last

After "significant discussion" with PPM Energy, NSTAR has obtained the consent of PPM to extend the start date for a proposed wind power contract between the utility and PPM's Atlantic Renewable Projects II until May 1, 2008.

However, NSTAR told the Massachusetts DPU, in the NSTAR green case (07-64), that, "based on the tenor of discussions with PPM at this point, the Company has significant concerns that PPM will be unwilling to extend beyond that date at the current fixed price embedded in the contract pending before the Department."

That's because the PPM project is in service, and would be able to sell its power into the market if not under contract to NSTAR.

NSTAR reported that, "market prices have increased by approximately 29 percent since the contract was first filed with the Department on July 24, 2007."

"This means that the contract pricing included in the proposed contract is under market from PPM's perspective, which is making it extremely difficult as a business matter for PPM to grant further extensions," NSTAR argued.

"Consequently, absent an order approving the contracts prior to April 31st by the Department, the Company is in jeopardy of losing the PPM contract with highly favorable price terms for customers," NSTAR told the DPUC.

The same problem is not true for the TransCanada Power Marketing contract since TransCanada's project is not in service yet.

AES Says OG&E Acquisition Would Create Market Power

Oklahoma Gas and Electric's acquisition of Redbud Energy and its 1,195 MW gas-fired, combined–cycle power plant, "is not in the public interest," unless FERC imposes "significant" mitigation measures, AES argued in a protest (EC08-58).

AES sees the deal creating market power and urged FERC to impose conditions to promote a competitive market in OG&E's service area.

"OG&E owns and/or controls virtually all generation in its service territory. OG&E does not procure long-term energy and capacity in a transparent, competitive manner. OG&E has conducted solicitations for short-term peak period energy over the past two peak seasons and both have been fulfilled by energy from the Redbud Facility. While OG&E manages an online bulletin board to solicit bids for non-firm, day-ahead energy purchases, the company's acquisition of the Redbud Facility removes the primary competitor from that market as well. Oklahoma Corporation Commission rules require jurisdictional electric utilities to competitively bid energy needs of longer than one year. Yet despite this requirement, OG&E refused to seek competitive bids for its long-term capacity needs that would have been filled by its proposed Red Rock facility or the long term generation to be filled by its proposed acquisition of the Redbud Facility. In short, OG&E's proposed acquisition of the Redbud Facility would remove its primary competitor from the marketplace and significantly increase OG&E's market power," AES alleged.

"OG&E has the means and the incentive to exercise its market power to force competitors into firesale situations. In 2003 Redbud predicted that OG&E would use its market power to "[strand] competitive generation within its territory and to then seek to acquire distressed assets as capacity needs materialize.' It is ironic that Redbud now finds itself contributing to the truth of its own prediction. AES is a party to a power sales agreement with OG&E that is terminable in 2012 and does not want to fall victim to Redbud's prediction," AES added.

AES attacked OG&E's market power analysis as flawed, arguing OG&E significantly overstated its own capacity needs.

"OG&E claims it expects to be short 424 MW of the capacity to meet its load and reserve obligations in 2010. That amount is twenty-five percent (25%) greater than the incremental capacity need OG&E presented to the Oklahoma Corporation Commission ('OCC') in 2007," AES pointed out.

OG&E contends that all of its wholesale customers are being served under long-term contracts and thus do not participate in the wholesale market, but AES notes 300 MW currently under contract will expire in 2012.

"The proposed acquisition will remove a primary competitor to OG&E for wholesale customers that could choose not to renew their contracts with OG&E if competitive alternatives were to exist," AES cautioned.

FERC should review the additional market power created by the Redbud Facility transaction by comparing the Redbud Facility capacity to the available capacity in OG&E, rather than to the total capacity in the SPP market as a whole, since much of the SPP capacity serves native load and in unavailable, AES reasoned.

AES urged FERC to establish an economic dispatch process that includes merchant generators for all of OG&E's power needs.

"This process will provide a workable surrogate for a competitive market and will reduce the adverse effects of the additional market power that OG&E will hold after completion of the Redbud Facility acquisition," AES explained.

AES also suggested making OG&E divest "sufficient" generation to offset the increase from buying Redbud.

Maritime Line Owners File Complaint Against ISO-NE

New Brunswick Power Transmission, New Brunswick System Operator and Northern Maine Independent System Administrator filed a complaint against ISO New England at FERC for the ISO's refusal to boost transfer capabilities between the U.S. and Canadian Maritimes (EL08-56).

The ISO has refused to take into account the added capability made possible by the new Northeast Reliability Interconnect - International Power Line (NRI-IPL) project, which has the capacity to increase the transfer capability across the New England/New Brunswick external interface by 300 MW (to a total of 1,000 MW), north to south, and 270 MW (to a total of 550 MW), south to north.

The line has been held up over settlement discussions over the existing Maine Electric Power (MEPCO) line, which has asked to become a pooled transmission facility to make its treatment on par with the pooled nature of the new tie. FERC has ruled that the transmission owners must address arguments from Casco Bay Energy over grandfathering its existing transmission rights (Matters, 4/1/08).

ISO New England's decision to limit the New Brunswick interface will, "have unreasonable and unnecessary negative impacts on the New England energy markets, and, potentially, on the Northern Maine market," the complainants argued.

The ISO's limitation means customers are paying for the new line in their pool transmission rates, but are being denied the benefits of the line.

The impact on the isolated Northern Maine system could be especially harsh since the largest generator in the Maritime region – the Pt. Lepreau nuclear unit – is scheduled to be out of service for an extended overhaul during the 2008-09 peak winter season. The complainants anticipate, "that generating capacity in the region may be tight and the additional south-to-north transfer capability of a fully effective NRI would greatly enhance the ability of the Northern Maine region to access generating capacity in New England."

The NRI/IPL project was expected to decrease New England power production costs by $31 million during the first six years of operation from 2008 through 2013, the complainants reported.

All those savings would be from production cost savings, which would actually produce an overall savings to consumers of $99 million during the six-year period, from the availability of new Canadian lower-cost suppliers, and the resulting downward pressure on market clearing prices in New England, the complainants added.

"Imposing on this market the cost of the second tie line, while withholding the economic benefits, is an unjust and unreasonable act. It is well established that transmission capacity may not be withheld if it has the result of constraining the generation market," the complainants argued.

The ISO's decision is even more unsound because the MEPCO roll-in proposal is not the only mechanism to allow the full capacity of the enhanced interface, and the ISO has even considered some interim proposals but has not pursued them, complainants told FERC.

Briefly:

BluPower Ready to Enroll in ERCOT

Nearly three years after getting its REP license (docket 31423), BluPower of Texas has informed the PUCT it intends to start enrolling customers in less than three weeks, and submitted the necessary testing and compliance filings with the Commission. BluPower, whose Texas office will be in Richardson, is a start-up led by the founder of USI Energy, the utility billing and energy management firm which was bought by Ista in 2005. Michael Anderson, founder of USI Energy, serves as BluPower CEO with corporate headquarters in Atlanta, Ga. BluPower will serve as its own QSE.

Duquesne RPM *... From 1*

"Based on Commission precedent and policy, these contracts must be honored with respect to any arrangements that Duquesne makes for providing service after it leaves PJM. Should Duquesne join the Midwest ISO, the Midwest ISO has already indicated its willingness to honor such contracts," the Commission added.

N.Y. UBPs *... From 1*

The board also found buried in force majeure clauses what it called "price majeure" clauses that would let ESCOs void contracts unilaterally, "based on the very commodity price fluctuations from which it was supposedly protecting the consumer."

The New York State Energy Marketers Coalition (NYSEMC) took one of the more pragmatic approaches to termination fees.

The group which includes Interstate Gas Supply of New York, Vectren Retail and Commerce Energy suggested that due to the "nascent" stage of the New York market, a "reasonable" cap on residential termination fees may be appropriate to get customers into the market and build confidence in ESCO supply, but only if it would automatically sunset in 36 months.

The cap, perhaps $250, would only apply to the commodity piece, and not ancillary products and services bundled with the commodity.

NYSEMC stressed, however, that in a fully developed competitive market, consumers will dictate the terms available in the market, and the reasonableness of those terms will be established through purchasing decisions.

Direct Energy suggested that standards, such as a termination fee grace period, should be imposed only on ESCOs as punishment for abusing standards or engaging in deception, rather than applying provisions to ESCOs following the rules and who can provide certain kinds of services at a lower price by mitigating their risk.

The Public Utility Law Project believes that oversight and enforcement of ESCO standards must be done at the Commission and not in utility tariffs. Because the current UBPs simply amend utility tariffs, PULP suggested a new process to codify the UBPs (and any changes) into PSC rules.

PULP opposes any termination fees because they lock customers into service when better opportunities may exist.

PULP also attacked ESCOs' keeping

customers for a prolonged period when customers desire to leave without resorting to a termination fee.

PULP cited IGS Energy which states in its terms and conditions (as provided by PULP) for gas service that when an off-cycle meter read is not requested, a customer request to drop to LDC service *may* (emphasis ours) take up to 10 weeks, during which time the customer remains liable to paying the contracted rates. PULP suggested IGS's language may be contrary to the Home Energy Fair Practices Act (HEFPA), which requires utilities to provide service upon request within five days.

Several ESCOs, including the Small Customer Marketer Coalition, alerted the PSC to drops to bundled service that do not conform to current UBPs. The drops, occurring at several utilities including NYSEG, NFG and National Grid, according to SCMC, happen when a customer submits a name change or other data modification that triggers a new account number. The new number prompts the utility to drop the customer to bundled service without any notification to the customer or customer's chosen ESCO, in violation of UBPs.

NYSEMC also reiterated that with the Office of Retail Market Development gone, ESCOs have lost a valuable link to communicate with the Commission and find collaborative solutions. In the absence of the re-deployment of the office, NYSEMC suggested an ESCO point-of-contact at the PSC to help ensure compliance with marketing standards, and also suggested an ESCO advisory group on the standards.

PULP argued that an assessment on ESCOs is appropriate because of the "substantial" work the PSC must do in reviewing ESCO complaints and ongoing modification of the ESCO regime (through specific ESCO dockets and also in various utility rate cases). PULP also cited choice marketing and education, and migration statistics, as being PSC costs created solely by ESCOs.

PULP suggested leveling the playing field by placing the assessment charge on the commodity side of service so both ESCOs and utilities would pay it, and to ensure retail access customers do not pay the fee twice.

Reliant Energy suggested developing statewide utility code of conduct rules in the UBPs, noting the current codes are buried in restructuring settlements and are utility specific.