Energy Choice Matters
May 5, 2008

O&R Rate Case JP Mostly Favorable to ESCOs

A joint proposal in Orange and Rockland's rate case would create a single Merchant Function Charge (MFC) and also direct the utility to study offering customers initiating utility service a chance to participate in O&R's ESCO Referral Program (07-E-0949).

The JP has been signed by O&R, PSC Staff, the Small Customer Marketer Coalition, the Retail Energy Supply Association and the Town of Ramapo.

O&R's current MFC is bifurcated, with a full service MFC that includes commodity charges, and a second MFC that simply includes credit and collections paid by retail access customers. The JP adopts Staff's recommendation to keep only a full-service MFC for bundled customers, eliminate the retail access MFC, and collect the credit and collections charges stemming from retail access customers through a POR discount.

That arrangement, used by all other New York utilities that have MFCs and POR, will allow customers to see the true retail price of the commodity and facilitate price comparisons, Staff explained.

The JP also directs O&R to study the advantages and disadvantages of revising the Market Supply Charge (MSC) so that it reflects the actual New York ISO day-ahead market prices that were in effect during each customer's billing period.

Although the JP creates a study concerning extending the ESCO Referral Program to new service customers, the Consumer Protection Board, in comments on the JP, noted the JP also subjects O&R's so-called PowerSwitch program to any generic changes the PSC makes in other cases. CPB argued that since PowerSwitch participation has declined from nearly 10,000 customers in 2003 to only 423 in 2007, the program may no longer be needed.

CPB favors ESCO funding of any referral program and observed that the program's design, which allows customers to be randomly assigned to an ESCO, rewards ESCOs who do not conduct their own marketing or customer education.

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New England Regulators Praise Competitive Nature of FCA, Oppose Generators' Proposed Changes

ISO New England's first Forward Capacity Auction (FCA) set "just and reasonable, competitive prices for capacity," hailed the New England Conference of Public Utilities Commissioners, plus the Connecticut DPUC, Maine PUC, Massachusetts DPU and New Hampshire PUC (ER08-633).

The state agencies were responding to protests from certain generators (Matters, 4/29/08) over the Forward Capacity Market (FCM) and urged FERC to ignore the pleadings as attempts to drive prices higher. Generators have proposed revisions to the Cost of New Entry, the Installed Capacity Requirement and the treatment of demand response.

"Robust" competition from new entry - 626 MW of generating capacity resources and 1,188 Demand Resources electing "New" treatment - demonstrate that the FCM's design has, "helped to break down traditional barriers to new entry in New England's capacity markets," NECPUC argued.

The first FCA's competitive clearing price of $4.50 kW-month (the price floor) was dictated by 2,047 MW of excess capacity resources, NECPUC pointed out.

"This auction showed that demand-side resources have proved their potential as a substitute for generation capacity and, looking ahead, these resources are likely to compete vigorously with generating facilities in the Commission's wholesale markets," NECPUC concluded.

Protestors now, "seek to limit or restrict competition, to prop up prices above the competitive level,

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Surges and Circuits

A weekly review of what's up and down in energy markets.

Power Surges

Ohio Gas Market: Vectren becomes the second LDC to receive approval for a transition plan to begin exiting the merchant function.

Short Circuits

Massachusetts Mass Market: We're agnostic about default service procurement so long as it meets the needs of customers, and take no issue with that aspect of the DPU's NSTAR Green ruling (Matters, 5/2/08). However, we must fault some of the DPU's logic in permitting NSTAR to sell a green product as a distribution utility offering based on the DPU's stated reasoning in its decision.

The DPU conceded that requiring NSTAR Electric to comply with DPU Standards of Conduct regulations in offering a green product would, "severely undermine the ability of the Company to offer the program." Given that basic fact, we think it's unfair for the Department to blame the market for failing to offer green alternatives to small customers, when the DPU admits NSTAR's product would be no more successful if it had to follow Standards of Conduct and, in essence, face the same challenges and barriers to market entry that competitive suppliers do.

By not having to follow the Standards of Conduct, NSTAR can market NSTAR Green to all distribution customers whenever they contact the utility, or receive communication from the utility. That means NSTAR can leverage its bill and bill inserts, phone tree, customer service reps, website, and other ratepayer-funded platforms to market the green program to a captive audience, an advantage no other supplier could possibly have. This captive audience and subsidized marketing is what eliminates the many barriers to customer choice that other suppliers face.

As such, in finding that forcing NSTAR to eschew these advantages by following the Standards of Conduct would undermine the product's success, the DPU admits that it is not a lack of competitive suppliers' ability or willingness to offer green products that is keeping them out of the market place, but structural hurdles to entry. It's ironic that the DPU's solution to bring more green products to the marketplace, then, is to allow only one market participant, NSTAR, to use its monopoly advantages to escape these barriers, rather than attempting to enable the offering of more than one green choice available to customers by removing market barriers.

As the DPU observed, a program similar to National Grid's where the utility facilitates green power products by acting as an intermediary between customers and competitive REC suppliers may be more compatible with a competitive market.

But the DPU returns to its logic that since customers do not have a green choice currently, NSTAR should be allowed to offer one financed by ratepayers. The Department doesn't address why a program similar to National Grid's would not be appropriate, since it would achieve the policy goal of offering customers green choices without the concerns of cross-subsidization or competitive imbalance.

While the Department takes great pains to establish that small customers at NSTAR do not have product choices, it glosses over the fact NSTAR admits it expects a mere 1% of customers to enroll in its green program. While that is not an insignificant number of customers on a system as large as NSTAR's, it bolsters the view that customer demand may not yet support a wide array of green offerings, and that competitive suppliers are not simply ignoring a pent-up customer demand that justifies the imposition of a utility program. It is hard to fault competitive suppliers for not offering a product customers will not even support when faced with pervasive utility marketing touting the product -- since we're sure competitive retailers' efforts to enroll customers, which cannot coral customers simply paying or asking about their distribution bill as NSTAR can, would be much more challenging.

In short, the DPU has damaged the balance of the competitive market, and created another barrier to competitive offerings in a market with too many already, in exchange for a scant 1% of eligible NSTAR customers enrolling in a green product. If the DPU's goal were to provide customers with more green options, we think mirroring some polices in Texas or New York, where green residential and small C&I products are pervasive, would be a more prudent strategy that would likely produce more green power being used.

Universal Gas & Electric: We were not impressed with the tortuous interpretation of MichCon's tariff taken by Universal (Matters, 5/1/08) in which the marketer claimed that customers do not enter into an agreement with Universal when signing an enrollment form. While Universal is correct that it has no obligation to perform under the contract until it and the utility accept the enrollment, we still think any customer without a JD is going to consider their enrollment signature (or follow-up verification call) as when they entered the agreement. Furthermore, while Universal argues sending the customer a notification of his or her switch before the switch is accepted by the utility would be pointless, since the switch might be rejected by the LDC, the reason, in general, that customers receive a notification letter after making a selection of another energy provider is to inform them a switch is about to occur. The letter ensures that the customer is aware of the pending change to make sure the customer understood a change in providers was contemplated, or that the customer was not slammed. The letters serve as a customer protection measure, and would therefore not make as much sense if they came after the switch occurred since the customer would lose the opportunity to block the switch from occurring.

FERC Order Hasn't Stopped Dispute Over Duquesne Zone Generation's RPM Participation

Despite a FERC order (Matters, 4/21/08), generators still disagree whether power plants in the Duquesne Light territory can properly participate in today's Reliability Pricing Model auction (ER08-194-003).

Several generators outside of the Duquesne zone (including Constellation, Mirant and the PPL Companies) asked for clarification of FERC's order which permits the Duquesne Zone generation to participate by getting firm transmission rights from PJM. Constellation, Mirant and PPL (Moving Parties) argued such a policy violates PJM's OATT by allowing the would-be RPM bidders to bypass PJM's transmission queue and by skipping needed transmission studies.

PJM in an answer called such arguments unpersuasive, since the Moving Parties haven't shown that physical power flows will change as a result of any decision by Duquesne on future RTO participation, nor have they explained why whatever transmission service that PJM is reliably providing today cannot or should not continue after a transition of the Duquesne Zone to Midwest ISO.

FirstEnergy, which has generation in the Duquesne Zone, separately explained that a study is not needed.

The transmission facilities that are capable of delivering capacity from Duquesne Zone capacity resources using the network service rights of PJM network service customers will be equally capable of delivering the same generating capacity to the same customers using firm point-to-point transmission service, FirstEnergy pointed out.

Pepco, Delmarva File Latest SOS Prices

Pepco and Delmarva submitted their latest SOS prices to the Maryland PSC:

Pepco ($/kWh)

	6/1 - 9/30	**10/1 - 5/31/09**
Residential (R)	$.11268	$.11391
Time Metered Residential (R-TM)		
On Peak	$.13252	$.12122
Intermediate	$.11314	$.11663
Off Peak	$.10015	$.10806
Type I*	$.12750	$.12201
Type II	**6/1 - 8/31**	
MGT LV II	$.15144	
MGT 3A II	$.14926	

*Not applicable to SL, OL, TN, SL-TN

Delmarva ($/kWh)

	6/1 - 9/30	**10/1 - 5/31/09**
Residential	$.110870	$.106883
Type I^	$.118096	$.111396
	6/1 - 8/31	
Type II^	$.142230	

^Separately metered space heating, water heating, or outdoor lighting customers have a different rate

Briefly:

Mirant Can't Trade Gas Imbalances When Higher Limit Invoked

Mirant won't be allowed to trade *any* gas imbalances on days it invokes it added 5% imbalance tolerance under a proposed arrangement with NSTAR (08-GC-1). That fact was disclosed by NSTAR in a discovery response to Hess (Matters, 4/25/08), which had previously noted Mirant has historically traded imbalances with competitive marketers. Previously, Hess had noted Mirant wouldn't be allowed to trade only its added imbalances.

CL&P Told to Use 8-Hour Peak in TOU Pilot

The Connecticut DPUC directed Connecticut Light & Power to further refine the pilot rates the utility is to offer under its metering plan and review of load response (05-10-03RE01). The DPUC ordered CL&P to eliminate its proposed Time of Use (TOU) rate with a four-hour peak and to only to offer a TOU product with the standard eight-hour peak (Matters, 4/16/08). "While it may be interesting to observe customer response to a 4-hour TOU period, reaction to this narrow time frame will do little to determine customer acceptance of the standard on-peak period that has been embedded in rates," the Department explained. The DPUC told CL&P to study in the pilot customer reaction to seasonal rates, including whether winter rates are appropriate. CL&P can still offer its proposed Critical Peak Pricing rate, and a Peak Time Rebate product under the pilot as well, though the Department is more interested in determining whether large numbers of customers will accept, and modify their behavior in response to, a standard TOU structure.

Texas Industrials Argue Against Uneconomic CHP

In reporting on Combined Heat and Power (CHP) to the legislature, the PUCT should, "focus on programs that will remove technological or institutional barriers, rather than provide potentially massive subsidies to developers of products that are otherwise uneconomic in the marketplace," the Texas Industrial Energy Consumers (TIEC) urged (34934). TIEC cautioned against creating any mandates or subsidies that would disadvantage consumers and market-based CHP installations. TIEC believes the Commission's energy efficiency rules in P.U.C. SUBST. R. 25.181 have recently been amended to include CHP in the energy efficiency standard offer programs, and urged the Commission to evaluate CHP's participation in such efficiency programs before carving out new CHP-specific mandates.

Oncor Wants to Withdraw Inaccessible Meter Replacement Plan

Oncor moved to withdraw its petition to socialize the cost of new meters for customers facing disconnect for inaccessible meters, citing the $30,000 cost to provide notice to all Oncor customers, and the lack of support among REPs (35280). Oncor had suggested the program as a solution for customers facing disconnect for having three consecutive months of estimated reads due to an inaccessible meter, so that customers forced to buy new meters (which may soon be replaced by advanced meters) would not have to bear the full cost (Matters, 3/27/08).

Michigan PSC Staff Suggests Path for Smart Meter Review

The Michigan PSC Staff recommended the Commission investigate developing minimum functionality standards and criteria for rate recovery of advanced metering infrastructure and enabling technologies for load management, demand response, energy efficiency, and prepayment services, in a report on the Smart Grid Collaborative (U-15278). Staff proposes to follow a process similar to that used by the PUCT, and suggested opening a docket for comments on Staff questions related to developing smart meter functionality standards to assist in creation of a Staff strawman. Staff's questions included how to measure costs and benefits of AMI; what level of Commission prescription for AMI standards is appropriate; what is the proper level of standardization among utilities; should open architecture be used; and what guidelines for cost recovery should be developed.

PUCT Readying New RPS, POLR Rulemakings

The PUCT staff received control numbers for several new rulemakings, including the ability of industrials to opt-out of RPS requirements (35628); designation of POLRs for 2009-10 (35630); and its 2009 report on the scope of competition (35631).

Old CONE Data Keeping Sempra out of PJM For Time Being

Sempra won't be pursuing new generation in PJM in the immediate future (Matters, 3/24/08) because of FERC's decision to deny a requested increase in the RPM Cost of New Entry, executives told investors on an earnings call.

"The economics that currently exist don't warrant us making an entry at this point-in-time," CEO Donald Felsinger told investors. Higher CONE values, or a long-term PPA, are needed to support new build in PJM, executives reported. Sempra recorded higher earnings of $242 million versus $228 million in the year-ago quarter on stronger utility and pipeline results. Sempra Commodities earned $59 million in the first quarter, hurt by a $17 million write down related to a mining counterparty, versus $71 million a year ago. Sempra Generation recorded quarterly profits of $45 million compared with $54 million a year ago.

PPL Sees Nuclear Plants Viable with Loan Guarantees

Nuclear expansion is "increasingly becoming a viable option," as building coal plants becomes more difficult, but federal loan guarantees are still needed to make nuclear projects work, PPL CEO James Miller told analysts on a conference call. PPL is weighing adding new nuclear capacity at its Susquehanna plant. PPL's Supply unit recorded lower first quarter earnings from lower wholesale margins (caused by higher fuel prices and outages) and losses related to its synfuels business. PPL overall posted higher profits of $260 million versus $203 million in the year-ago quarter.

Appeals Court Backs FERC on CAISO Fee

FERC's approval of the California ISO grid management charge when the ISO started, and the Commission's decision to allow Pacific Gas & Electric to pass through the fee to customers, was upheld by the U. S. Circuit Court of Appeals for the District of Columbia. FERC properly found the fee to be for a new service and that it was distinct from other charges under existing pacts between PG&E and large customers, who had protested the fee, the Court determined.

CFTC Picks Energy Committee

The CFTC named 25 members of its new Energy Markets Advisory Committee, which is to advise the CFTC on developments in energy markets that may raise new regulatory issues and the appropriate regulatory response to protect market integrity and competition, while preserving opportunities for innovation and increases in efficiency. CFTC Acting Chairman Walter Lukken will chair the EMAC.

EMAC Members:

Bob Anderson
Committee of Chief Risk Officers

Laura Campbell
Memphis Light, Gas & Water

Donald Casturo
Goldman Sachs Group, Inc.

Paul Cicio
Industrial Energy Consumers of America

Bo Collins
1.618 Group LLC

Sean Cota
Cota & Cota Oil & Propane

Kevin Fox
D.E. Shaw & Co., L.P.

John P. Heimlich
Air Transport Association

R. Skip Horvath
Natural Gas Supply Association

Brian Kelly
Colonial Energy, Inc.

Anthony Mansfield
Heller Ehrman LLP as a representative of Shell Trading (US) Company

William McCoy
Morgan Stanley

James Newsome
NYMEX, Inc.

Ron Oppenheimer
Merrill Lynch Commodities, Inc.

Paul Pantano
McDermott, Will & Emery as a representative of the Futures Industry Association

Satu Parikh
Lehman Brothers, Inc.

Robert Pickel
ISDA

Dr. Craig Pirrong
Bauer College of Business, University of Houston

Michael Prokop
Amerex Brokers LLC

Richard Sandor
Chicago Climate Exchange, Inc.

John Shelk
Electric Power Supply Association

Foster Smith
J.P. Morgan

Jeffrey Sprecher
ICE Futures U.S.

Mark Stainton
Citadel Investment Group, L.L.C.

Don Whittaker
American Petroleum Institute

O&R JP ... *from 1*

The JP also creates a single Bill Issuance and Payment Processing (BIPP) charge that will only appear on full service customer bills. Retail access customers would not see a billing charge on their bill. Instead, that cost would be recovered from the ESCO or ESCOs (if dual fuel) serving the customer.

RESA suggested modifying the JP to lower the Mandatory Hourly Pricing (MHP) threshold from 1,000 kW to 500 kW to offer customers more accurate pricing signals, consistent with Commission precedent.

NECPUC on FCA ... *from 1*

and to undermine the New England States' efforts ensure their own adequate supply of capacity resources," NECPUC claimed.

The protests, "reflect the views of existing generators - not new generators - and their disappointment that competition with demand response resources pushed the price in the first FCA to its floor," NECPUC charged.

"These intervenors merely seek to recover a windfall above their going-forward costs," the state regulators alleged.

"That the prices were not as high as existing generators may have hoped or anticipated does not signify a problem with FCM's price formation," NECPUC reasoned.

That the price hit the price floor is not a cause for concern, "but instead shows that a large number of qualified bidders competed to provide the needed product to the consumer," NECPUC noted.

"In other words, the market was competitive," NECPUC stressed.

NECPUC attacked protestors' proposal to raise the Cost of New Entry, or change its calculation from being market-based.

"Protesters advocating a change to the method for setting the new CONE value rely on simplified comparisons between consultants' estimates for the cost of new entry and CONE without fully considering all revenues that generators receive in New England wholesale markets," NECPUC argued.

"Furthermore, they draw inappropriate comparisons between the cost of new entry constructs in other wholesale capacity schemes and the FCM's CONE when those other capacity mechanisms have radically different designs that do not permit reasonable analogies," NECPUC pointed out.

FERC, however, declined to strike the protestors' comments out of hand, but will take under advisement the ISO's view that the protests are outside the scope of the docket.