Energy Choice Matters

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Md. Industrials Urge PSC to Vacate Mitigation for New Type II Customers

Raising due process concerns, the Maryland Energy Group (MEG) asked the state's PSC to vacate and reconsider its letter orders directing Baltimore Gas & Electric, Delmarva Power and Allegheny Power to mitigate rates for new Type II customers through a distribution surcharge applicable to all non-residential customers (Matters, 5/20/08). MEG urged the Commission to set the matter for evidentiary hearings.

The letter orders stand as a regulatory precedent with far-reaching implications, MEG cautioned, because the Commission is taking a generation expense (an unregulated market charge) from one rate class, and shifting it to a completely separate rate class as a non-bypassable wires charge in the regulated distribution part of the bill. More remarkable is that the unprecedented transfer is being done outside of a rate case, MEG noted.

The orders, the group of 15 industrial and institutional customers pointed out, did not provide parties an opportunity to argue whether the distribution rate being ordered by the Commission is in the "public good" or would result in a "reasonable return" for utilities, as required under PUC § 4-101.

Fundamentally, the justness and reasonableness of a rate involves a "thorough and complete" evaluation of a utility's rate base in a rate case (*Building Owners & Managers Ass'n of Metro. Baltimore, Inc. v. Public Service Commission*, 93 Md. App. 741), MEG observed, and it does not appear that such an analysis was undertaken with respect to the mitigation ordered.

While mindful of the compressed timeframe facing the Commission, MEG stressed that the new costs facing large energy consumers, and the importance of regulatory precedent established by the decision, compel a complete administrative record in the case.

Even if MEG is permitted to participate at the May 28 administrative meeting where a final order is due, it's not clear whether stakeholders will be able to make arguments about the underlying

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Home Services Start-up Delayed New York Entry for Universal Gas & Electric

Universal Gas & Electric is preparing to enter the New York market, picking up plans it deferred while launching a home services unit in Ontario this quarter, Mark Silver, President of Electricity and Gas Marketing for Universal Energy Group, told investors on a recent earnings call.

UG&E's entry into New York will be "measured," and will start by entering two service territories -- one of which will be Consolidated Edison, Silver reported.

While an earlier entry into New York was planned, UG&E focused efforts on developing a backoffice for its new home services unit in Ontario, National Home Services, which has begun offering customers a long-term water heater rental program.

Silver called the home services business one of the most exciting opportunities he's seen in 10 years, noting National Home Services has seen "extremely encouraging" results so far and suggested 100,000 accounts was within reach in a few years.

UG&E doesn't have any concrete plans after its New York entry but continues to assess the Illinois and Texas markets.

The marketer added over 16,500 net Residential Customer Equivalents (RCEs) during the quarter on a total of 38,700 gross additions, up 18% from a year ago. UG&E now has nearly 430,000 RCEs:

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Conservation Product Among Reliant Type II Offerings

Reliant Energy is to offer about five off-the-shelf products as part of its entry into the Maryland Type II market, including a new conservation product, Rich Rathvon, vice president of PJM marketing and energy sales for Reliant, told us.

Reliant announced that it's expanding its active marketing down to customers 25 kW in size earlier this week (Matters, 5/20/08). Previously, Reliant had focused on the hourly-priced Type III class.

The conservation product will charge customers a lower rate if their usage stays below a certain threshold, Rathvon explained. He declined to elaborate further on the mechanics for competitive reasons, but Reliant will be launching a website dedicated to the product next week.

Web portals will be a major part of Reliant's acquisition strategy, along with the customary marketing channels.

Other offers include a 15% green product and the standard menu of fixed-price contracts and monthly variable contracts.

Despite continued turmoil in the Maryland market, from the broad overhang of re-regulation to the more narrow price mitigation for new Type II customers, Reliant is committed to the market, Rathvon said.

When market rules are properly designed, Reliant will enter and serve customers. The quarterly SOS pricing for Type II customers is the main driver behind Reliant's entry.

NRG Energy Tenders Calpine Offer

NRG Energy offered to buy Calpine for $11.3 billion in stock, NRG disclosed yesterday. Calpine is still reviewing the unsolicited bid.

Calpine's nearly 24,000 MW would essentially double NRG's 24,000 MW portfolio and create a more diverse fleet that could weather price volatility, NRG said. Calpine's gas-fired fleet would also be attractive in a carbon-regulated world.

NRG reported that if the deal went through, it would have to sell between 3,000 MW to 5,000 MW in Texas to comply with state laws.

Calpine exited bankruptcy some four months ago and has not named a replacement for current CEO Robert May who announced his intention to leave once a successor was found.

"This is, quite simply, the right deal, at the right point in time, between the right partners," NRG CEO David Crane said.

NRG reported it could lower yearly general and administrative costs $100 million through the merger, by cutting duplicative jobs and other operations. NRG cited its "successful" integration of Texas Genco in 2006 as another of its strengths.

NRG's offer represented a 16% premium when made May 14. Goldman Sachs is serving as Calpine's financial advisor while legal counsel is provided by Skadden Arps.

Smitherman, Hudson Favor Safe Harbor Financial Provision for CREZ TSP Selection

Arguing that the Commission will know financial wherewithal when it sees it, PUCT Chairman Barry Smitherman offered tweaks to the proposed financial qualifications for Transmission Service Providers (TSPs) seeking to build lines to Competitive Renewable Energy Zones (Matters, 5/9/08).

In a memo to fellow Commissioners ahead of today's open meeting (34560), Smitherman reiterated his belief that current CCN holders should have "safe harbor" from having to provide additional information to demonstrate financial resources aside from information related to the specific project proposals.

Smitherman would allow "non-traditional" entities that may have non-traditional methods of financing to provide additional information to show adequate financial resources.

Although broad, Smitherman explained that he did not see a way to adequately articulate a set of financial metrics without potentially excluding a qualified, interested entity.

Commissioner Paul Hudson offered a simpler solution in a memo to his colleagues, suggesting that the rule have language added that would allow a TSP to simply provide, "evidence satisfactory to the commission," that it has the capability to finance the proposed project.

Separately, an ALJ accepted the PUCT staff's petition to create docket 35665 to facilitate settlement talks regarding TSP selection in parallel to the CREZ rulemaking in project 35460 (Matters, 5/14/08). The ALJ set a prehearing conference for June 3.

Brattle Confirms Customer Response to Dynamic Prices Even Without Enabling Technologies

Even without giving customers enabling technologies to respond to dynamic prices, critical peak pricing (CPP) programs typically lead to peak load reductions on the order of 20% on CPP event days, a Brattle Group study examining results from 14 dynamic pricing pilots determined.

The greatest load reductions came in CPP programs that gave customers enabling technologies such as two-way communicating thermostats and gateway systems, where peak period consumption on CPP days fell approximately 30%, on average.

Simple time-of-use rates (TOU) shaved peak demand as well, but not as effectively. TOU rates alone reduced peak consumption 5%, on average. When TOU rates were combined with enabling technologies, peak load reductions reached 25% on average, Brattle found.

From its examination, Brattle determined that dynamic electricity pricing programs are effective in reducing electricity usage for residential customers. The size difference between dynamic prices, and whether customers have central air conditioners, also impact potential for load reduction.

By the year 2030, dynamic pricing and other forms of demand response could reduce peak demand in the U.S. as a whole by 11%, claimed Ahmad Faruqui, a principal at Brattle and the paper's co-author.

"A demand response program that blends together the customer education initiatives, enabling technology investments, and carefully designed time-varying rates can achieve demand impacts that can alleviate the pressure on the power system," the paper concluded.

Cooperatives Balk at MISO Change to Marginal Loss Refunds

Cooperatives represented the bulk of the opposition to a Midwest ISO proposal which would essentially apply marginal loss charges to certain Grandfathered Agreements (GFAs).

MISO told FERC that the current tariff provides Option B and Carved-Out GFAs excessive reimbursement of marginal loss surpluses, with the change designed to create more equitable treatment among market participants (ER08-925).

Currently, Carved-Out GFA customers are given a refund equal to 100% of their marginal loss payments from the Over-Collected Loss (OCL) fund.

"Thus, the parties to these contracts receive Midwest ISO transmission service without making any contribution for the cost of losses to Midwest ISO's OCL fund," Wisconsin Public Service and Upper Peninsula Power argued.

Option B GFA customers receive 50% of the marginal losses they pay, still disproportionately higher than the refund available to non-preferred customers, the Wisconsin IOUs claimed.

Non-preferred customers, "are left with an OCL fund residual that has been depleted by the disproportionate refunds given to the preferred Option B and Carved-Out GFA customers," Wisconsin Public Service and Upper Peninsula Power observed - amounting to "patent and substantial" discrimination.

The Option B GFA rebates are about 71% higher and the Carved-Out GFA rebates are about 209% higher than the rebates to non-preferred customers, the Wisconsin IOUs reported.

Duke, which supports MISO's proposal, noted certain GFA entities enjoyed a $72 million windfall last year at the expense of other market participants because of the current treatment of losses.

But Great River Energy characterized the MISO proposal as interference with the contractual rights of parties that pre-date MISO's existence, which must be rejected.

Great River pointed to prior Commission orders, including one in November of 2007, which rejected similar arguments about GFA refund treatment amounting to windfalls.

Basin Electric Power Cooperative and East River Electric Power Cooperative contended that since the Midwest ISO does not provide transmission service pursuant to its tariff in connection with service to loads served under Carved-Out GFAs, the ISO does not have a basis to assess marginal losses on Carved-Out GFAs. Transmission service for Carved-Out GFA loads is provided pursuant to the Carved-Out GFAs, the cooperatives explained.

The Carved-Out GFAs, and not MISO, also provide for losses service associated with that transmission service, the co-ops added, so there is no justification for a MISO charge for marginal losses.

Basin Electric called the refund mechanism a "bookkeeping adjustment" needed because Carved-Out GFAs should not have been assessed marginal losses in the first place.

The ISO also ignores that customers under Carved-Out GFAs typically pay average losses to transmission owner counter-parties, and thus charging Carved-Out GFAs marginal losses would result in double charges.

Several cooperatives argued the Midwest ISO has not met its burden for abridging their GFAs under the Mobile-Sierra standard.

However, Duke argued that the Mobile-Sierra doctrine is not applicable because MISO's plan would not change any scheduling requirement, or any other requirement that would affect service under a GFA.

MISO is only eliminating a refund mechanism applied at settlement, Duke stressed, which is only operable after service has already been provided. Since GFA service between contracting parties is not altered, the Mobile-Sierra doctrine does not apply, Duke reasoned.

The Mobile-Sierra doctrine protects the integrity of a contract between the parties to a contract and does not create rights on non-parties, Wisconsin Public Service and Upper Peninsula Power added. Since MISO and market participants are third parties, the Mobile-Sierra test cannot be applied to them, the IOUs argued.

Briefly:

Young Energy Gets Two New Trade Names

The PUCT approved Young Energy's request to add the trade names New Electricity and Green Fields Electricity to its REP certificate (35604).

Nooruddin Investments Withdraws Request to Market as "Texan Energy"

Nooruddin Investments amended its REP application to remove the trade name Texan Energy, after Texpo Power raised concerns the name was too similar to its approved trade name of Texpo Energy (Matters, 5/21/08). Nooruddin did not list any new trade names in place of Texan Energy (35659, 35704).

N.Y. PSC Approves New Date for Balancing Service Selection at Central Hudson

The New York PSC approved a request from Central Hudson Gas & Electric to move forward the date ESCOs must choose between Winter Bundled Sales Service (WBS) or Balancing Service to meet their gas requirements during the period November through March (08-G-0214). Central Hudson will move the date up about a week, from April 1 to the date that Firm Transportation Information is available for the month of April, as indicated on Central Hudson's Calendar of Gas Transportation Scheduling. The change will not cause problems for any ESCO, Central Hudson reported, since the old date of April 1 was established prior to the utility adopting a new web-based interactive Calendar of Gas Transportation Scheduling, which ESCOs have been using for over a year with few problems. Central Hudson told the PSC that ESCOs are familiar with the new calendar system and have been abiding by its deadlines with no complaints.

Utility Hedging Won't Always Produce Lower Prices, Brown Cautions

In an update on summer electricity prices and utility hedging, New York PSC Chair Garry Brown cautioned that while sometimes hedging will lead to favorable prices, which is likely this summer given rising energy prices, there will be times where hedges leave customers paying more than the market price for power, and policymakers will have to resist rapping the utilities for above-market costs. The goal of hedging, he reminded, is to reduce volatility for mass market customers, which may mean higher prices at times. Commissioner Cheryl Buley asked staff about legacy hedges with nuclear plants that are due to expire in the coming years, and if the Commission is preparing for the elimination of those cheap sources of power. Staff reported that the Nine Mile I contract ends in late 2009, the Nine Mile II contract ends in the 2010-11 timeframe (although there are revenue sharing provisions lasting until 2020), while the Ginna contracts last longer. Staff reported they were planning on talking with National Grid soon about the end of the Nine Mile contracts.

Buley Raises Concern About Length of NYSERDA Fast-track Programs Under EEPS
As ALJs briefed the New York PSC on the energy efficiency portfolio standard (07-M-0548) at today's open meeting, Commissioner Cheryl Buley questioned proposals to fast-track certain NYSERDA programs for a period of over three years. Buley asked whether such authorization would "protect" the NYSERDA programs from competing proposals for too long a period of time. Buley also voiced support for a white tags market as a way to reach efficiency goals at a lower cost, especially important when staff proposals could add up to $2.50 onto average residential bills and costs for everything from energy to food is rising, Buley noted. Chairman Garry Brown reported that he eventually wants RPS, EEPS and similar policies to be consolidated under one umbrella, though he stressed he did not want current efforts to be impeded by working to combine complementary dockets. As part of the EEPS case, the PSC is issuing for comment a senior staff recommendation of principles for the introduction of monetary performance incentives to utility-run energy efficiency programs.

ERCOT Switch Letters Issued With Wrong Rescission Deadline
Due to a processing error, ERCOT reprocessed a subset of customer switches submitted on May 9 through May 12, and included an incorrect cancellation date in the switch notices sent to the 441 customers with reprocessed switches, ERCOT reported to the PUCT (27706). The incorrect cancellation date did not provide customers with a 10-day rescission period to cancel the switch as required by P.U.C. SUBST. R. § 25.474(1)(1)(D) and ERCOT Protocol § 15.1.1. Twelve REPs were impacted by the processing error. Although the switch cancellation notices included an incorrect cancellation date, ERCOT's retail transaction system provides customers with the required 10-day customer protection period to cancel a switch.

FERC Compliance Workshop Set for July
FERC has set for July 8 a compliance workshop which will include discussion of elements of a sound compliance program, while giving market participants a chance to share information and perspective about compliance (AD08-5).

Type II Mitigation ... *from 1*

mitigation policy, or only the implementation of the orders and associated utility compliance filings. Participation at the administrative meeting does not allow MEG or others to file discovery requests to vet the utilities' proposed surcharges, MEG added.

MEG has no objection to mitigation for new Type II customers, but customers who have nothing to do with Type II service should not be required to subsidize such mitigation, MEG concluded.

MEG made its filing in Case 9056 because it relates to Type II SOS, but the Commission hasn't assigned the mitigation issue to 9056 or any other docket yet.

UG&E Earnings ... *from 1*

88,000 Canadian gas, 205,000 Canadian electric and 135,000 U.S. gas.

In Canada, residential customers account for 73% of RCEs while in the U.S., residential customers account for 72% of RCEs.

The attrition rate in Canada was at 11.4%, slightly below forecast, while in the U.S. negative media coverage regarding long-term gas contracts in Michigan pushed attrition to 17.6%, higher than expected. UG&E's earnings presentation was held before issuance of a Michigan PSC order instituting a contested case regarding Staff's complaint against UG&E (Matters, 5/21/08), but executives repeated previous arguments UG&E has made in its PSC filings, noting that marketing materials were vetted by PSC staff prior to use.

Quarterly net income for gas and electricity marketing was Cdn$26 million, up from Cdn$13 million a year ago, from customer growth, seasonally higher customer energy consumption, and an increase in unrealized gains on commodity contracts.

U.S. natural gas revenue was Cdn$70.8 million for the quarter, over three times higher than last year's Cdn$22.8 million, on consumption of 6.7 million Mcf.