Energy Choice Matters

June 17, 2008

N.Y. RD Recommends Rejection of Iberdrola-Energy East Acquisition

An ALJ recommended that the New York PSC reject the proposed acquisition of Energy East by Iberdrola on the grounds that it does not satisfy the "public interest" requirement of Public Service Law §70. But should the Commission accept the merger, it should prohibit Iberdrola from owning any generation within Energy East's transmission and distribution (T&D) territory (07-M-0906).

The recommended decision (RD) finds that the question the Commission should ask is why the transaction, on balance, is worthwhile for anyone but petitioners. "[T]his record provides no cogent answer," the ALJ observed.

The RD urges the Commission not to waive the net benefits requirement imposed in previous energy merger cases. The Commission should reject the transaction, "precisely because its lack of potential synergies or other benefits (when combined with the attendant risks) means that disapproval would avert a net detriment rather than forfeit an opportunity," the RD concludes.

Should the Commission decide to approve the transaction, approval should be conditioned on Iberdrola and its affiliates divesting existing generation (including wind, fossil and hydro) interconnected to Energy East's T&D assets, and not owning or operating new generation in the service area. Energy East and merchant generator Cayuga Energy own about 415 MW of fossil power -- 257 MW at the Russell Station and 158 MW at four other units. Energy East owns about 118 MW of hydropower.

With respect to the hydro units, the RD explains that, "divestiture would assure customers the unquantified but real benefit of eliminating a source of [vertical market power], with its attendant

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Deutsche Bank Suggests Quick Edits to ERCOT CRE List to Limit OOME

The shortcomings of ERCOT's current Contingency and Closely Related Element (CRE) list, which has taken on new importance under the recently implemented PRR 764, have already led to "substantial" Out of Merit (OOME) activity in the West Zone, Brandon Whittle, ERCOT regulatory vice president at Deutsche Bank, told Congestion Management Working Group members in an email.

Under PRR 764, zonal constraints are only those constraints for which a Commercially Significant Constraint (CSC) or CRE is the base case or post-contingency limiting element, which effectively treats more congestion as local rather than zonal (Matters, 6/6/08).

The shortcomings, particularly along the West to North interface, have allowed for substantial Local Congestion costs where Zonal Congestion would be more appropriate, Whittle noted.

Local Congestion is uplifted to all Load Serving Entities, representing consumers, while Zonal Congestion is directly assigned, and as a consequence of that assignment, provides for appropriate price signals in each zone, Whittle reminded.

In the last seven days since PRR 764 approval, there have been just over 60 entries in the Daily Grid Operations report regarding congestion activity in the West Zone, Whittle reported. While some of that activity has been appropriately local for intrazonal congestion, Whittle contends that a good portion of the activity could be managed with Zonal Congestion.

Specifically, Whittle pointed out that the West-North Stability limit, which has 11 entries in the logs over the past seven days, could be used if Bowman to Graham was considered a CRE. That would

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U.S. Gas & Electric Refutes Stand Energy Allegations on Ohio License

A "careful reading" of Stand Energy's objection to U.S. Gas & Electric's application for an Ohio gas marketer's license (Matters, 6/6/08) shows that while Stand may have a grievance against U.S. Gas & Electric, no allegation has led to a ruling, judgment, contingent liability, revocation of authority, or formal regulatory investigation, U.S. Gas & Electric told PUCO (08-0601-GA-CRS).

In its filing, Stand cites no case numbers or dates on which any regulatory body found U.S. Gas & Electric in violation of a statute, regulation or rule, U.S. Gas & Electric pointed out. Further, no case or cite was provided as to any investigation or reprimand. To U.S. Gas & Electric's best knowledge, no such conviction, reprimand, or even investigation exits.

Given that no ruling or similar judgment has been made against U.S. Gas & Electric, it was appropriate to indicate no such liabilities on its application, U.S. Gas & Electric noted.

While Stand has alleged U.S. Gas & Electric slammed two of its New York customers, "it is fair to say that the allegations made in [Stand's] Ohio Commission filing is at best premature and may well prove to be a false accusation," U.S. Gas & Electric suggested, since Stand is still looking for evidence of a wrongdoing in New York.

Stand also made allegations which are "materially inaccurate and misleading" regarding U.S. Gas & Electric's sale of unregistered securities, U.S. Gas & Electric added.

Stand's protest is misleading because it intimates that the SEC determined that U.S. Gas & Electric had violated federal law when there was no such determination, U.S. Gas & Electric claimed. U.S. Gas & Electric instead entered a consent decree that specifically stated no admission of wrongdoing.

Generators Claim FERC Errors in Ending PJM Offer Cap Exemptions

Generators asked for rehearing of FERC's decision to end offer cap exemptions for certain generators in PJM, arguing that the Commission failed to meet the statutory requirements of the Federal Power Act, used faulty assumptions, and has created unintended consequences (EL08-34, Matters, 5/19/08).

The PJM Power Providers Group (P3) argued that FERC ignored statutory requirements of section 206 of the Federal Power Act by changing a rate without finding that its replacement is just and reasonable. While FERC concluded the existing offer cap exemptions were unjust and unreasonable, it failed to determine that the new rate was just and reasonable, P3 noted. In fact, FERC's order repeatedly recognizes that application of the Three Pivotal Supplier structural screen has not been shown to be just and reasonable, P3 observed.

PPL claimed that it "defies logic" to assume, as the Commission did, that the influx of competitive generation with the inclusion of American Electric Power and Commonwealth Edison in the PJM footprint has lessened competition.

FERC also cannot support its "mistaken belief" that RPM revenues will provide necessary revenues to offset the elimination of the offer cap exemptions, PPL added.

The Commission's order failed to recognize that the exemptions offset over-mitigation inherent in the Three Pivotal Supplier Test, PPL claimed. "It is arbitrary and unlawful to remove offsets that counter the unjust and unreasonable excesses of a market mitigation scheme while maintaining that mitigation scheme for an indefinite period," PPL observed.

While FERC's order found that the MAAC and APS South Interfaces are generally liquid and therefore workably competitive, the Commission concluded that an entity might exercise market power during periods of constraint on those interfaces.

But that finding is contrary to precedent from the D.C. Circuit Court of Appeals which has found that automatic mitigation is inconsistent with markets that are workably competitive, PPL suggested. The Commission, PPL noted, must distinguish between market power and scarcity prices and when approving a market mitigation scheme, the court has held.

The end of the offer cap exemptions could harm reliability by inefficiently dispatching generation that has limited run time, such as due to air quality restrictions, NRG Energy cautioned.

The offer cap exemptions provided a tool for

generators that allowed the affected units to control when and how often they are dispatched, which is very important when such units have limited run times, NRG explained.

Under the new mitigation rules, a plant's ability to self-manage is effectively eliminated during periods of localized congestion, NRG noted, since bids placed by such a unit are now mitigated to cost during periods of congestion, and the unit is now more likely to be selected for dispatch by PJM.

The result is that a price capped unit could quickly use up its available hours during periods of congestion and run through its entire allotted run time prior to the summer peak period, NRG cautioned.

PUCO Wants Price Responsive Demand to Offset MISO RA Obligations

The Midwest ISO's tariff relating to its resource adequacy program should ensure that price responsive demand is on a level playing field with load modifying resources and generation, PUCO told FERC (ER08-394-02).

Price responsive demand, as PUCO uses the term, refers to usage which naturally declines as real time wholesale and retail prices increase. With advanced metering and retail pricing that is linked to the wholesale market, loads will decline in a predictable manner as prices increase without MISO sending dispatch signals to millions of air conditioners, homes, and businesses, PUCO explained. Recent Ohio legislation encourages advanced metering and time-differentiated pricing.

MISO's tariff, as submitted in compliance filings, would only count demand response that can be dispatched towards meeting capacity requirements. Under MISO's amended tariff, price responsive demand also does not reduce forecast LSE requirements. That's inconsistent with cost-effective achievement of long-term resource adequacy, PUCO argued.

LSEs should not have to hold capacity and planning reserves for demand that predictably will not occur at prices that are higher than those that might be assumed in the development of a point load forecast, yet are equal to or below applicable price ceilings, PUCO contended.

Most of the economic benefits of investing in advanced metering to support time-differentiated prices are from avoiding the need for new generation, PUCO reminded. If LSEs are required to hold additional capacity and planning reserves for demand that would not occur at higher prices, the business case for investing in advanced metering and the ability of restructured states, such as Ohio, to cost-effectively achieve long-term resource adequacy will be compromised, PUCO explained.

PUCO suggested adding the following language to MISO's tariff:

"An LSE, consistent with any State regulatory requirements, may specify its Forecast LSE Requirement as a curve describing the relationship between anticipated integrated hourly peak MWs and price."

Briefly:

Calif. PUC Would Open CHP Rulemaking Under Draft

The California PUC would open a rulemaking to implement the provisions of AB 1613 and establish the policies and procedures for IOUs' purchase of electricity from new combined heat and power (CHP) systems under a draft released yesterday. AB 1613 authorizes the Commission to require an electrical corporation to purchase excess electricity delivered by a new CHP system of less than 20 MW that complies with certain sizing, energy efficiency, and pollution control requirements, and to establish limitations on the amount of excess electricity that an electrical corporation is required to purchase from CHP systems. The rulemaking would determine what fits the definition of a "new" CHP system; adopt rates, charges and tariffs for excess electricity purchased from an eligible CHP system by the IOU; and adopt procedures for each IOU to establish a pay-as-you-save pilot program for eligible CHP systems that would allow CHP owners to pay for up-front CHP costs through on-bill financing.

Two Calif. IOUs Want to Ditch Independent Evaluator for Short Procurements

Pacific Gas & Electric and San Diego Gas & Electric urged the California PUC to modify Decision 07-12-052 to only require an Independent Evaluator for all competitive RFOs

that seek products of more than two years of duration, rather than for products lasting longer than three months (R. 06-02-013). The utilities claim that the change would ensure adequate oversight of the RFO process, while reducing the administrative burden and cost of utilizing an Independent Evaluator for RFOs involving shorter-term transactions. The utilities pointed out that all RFOs for products with a term greater than three months are also reviewed with the Procurement Review Group, and that transactions resulting from the RFO are reported in the quarterly compliance reports. Thus requiring an Independent Evaluator on top of those other measures, "is overly broad, needlessly increasing costs to ratepayers and creating undue administrative burden without providing sufficient offsetting benefits."

PUCT Staff Moves to Revoke Riverway Certificate

The PUCT staff filed a petition to revoke the REP certificate of Sure Electric (Riverway Power) since the REP no longer has the capability to provide continuous and reliable electric services to its customers (35783). Riverway recently defaulted on its ERCOT obligations, prompting a POLR drop.

Maine PUC Accepts Standard Service Agreement Changes

The Maine PUC accepted revisions to the Standard Offer Standard Service Agreement which reflect many of the changes which were individually being made to the current standard agreement by SOS bidders (2008-239). The revisions include provisions that impose additional obligations on the T&D utility in the event either the state or the T&D utility default on their obligations related to standard offer service, or the T&D utility's financial situation deteriorates below investment grade.

RBS Seeks Ohio Electricity License

Though Sempra Energy Solutions already has an electric marketer's license in Ohio, parent The Royal Bank of Scotland applied for its own license (08-0714-EL-CRS), initially proposing to serve mercantile and industrial customers at the FirstEnergy utilities. RBS has retail licenses in Connecticut, Oregon and Texas as well. Sempra Energy Solutions will act as RBS's scheduling, EDI and backoffice vendor.

Maryland PSC Approves June 9 Procurement

The Maryland PSC accepted the June 9 procurement of Type II load for all utilities and residential load at Allegheny Power (9065, 9064). All 28 available blocks were filled with 141 bids submitted. Vantage Consulting noted the bid prices reflect escalating prices for electricity in PJM, driven by unprecedented, worldwide increases in oil, coal and natural gas prices, as well as capacity charges due to changes in calculations by PJM. "In particular, PJM's Reliability Pricing Model continues to keep capacity prices at a high level in the short term," Vantage testified.

Goldstar Wants Md. Broker License

Goldstar Energy Group (formerly Austere Energy Management) applied for a broker license in Maryland. Goldstar also brokers in New Jersey and New York, and applied to broker C&Is in the four IOU territories as well as SMECO and Choptank.

EnergyWindow Offers New Cost Projection Software

EnergyWindow yesterday launched its PowerProjector software, a cost projection and value-at-risk analysis tool designed to help executives more accurately project their regulated and deregulated energy supply costs. The software costs from $5,000-$25,000 for the initial license, depending on the size of the analysis needed, and between $2,000-$8,000 for annual maintenance.

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inefficiencies and excess costs, while issuing potential investors a clear signal of the Commission's commitment to maintaining effective competition in New York."

All parties appear to recognize the great importance of including in the state's energy portfolio a sufficient proportion of renewable resources such as wind; and encouraging economic growth, particularly in upstate areas such as the NYSEG and RG&E territories, the RD notes.

But Iberdrola's ownership of wind generation in those territories would undermine both

objectives, the RD finds, as vertical market power would interfere with the provision of economically priced wind energy while encumbering upstate economic growth with the dead weight of excessive energy prices.

"Indeed, it is axiomatic that an effectively functioning market will better serve the State's environmental and economic growth objectives than one in which the Commission allows inefficiencies to occur through the exercise of market power," the ALJ observed.

The RD rejects staff's argument that Iberdrola should be prohibited from owning generation throughout the state, since staff has identified no scenario in which ownership of generation interconnected elsewhere in New York would subvert the Commission's objectives by actually creating market power. The RD also dismisses the suggestion of the Independent Power Producers of New York that Iberdrola be prohibited from owning cost-of-service generation across all territories, determining that the existence of cost overruns from ratebased plants does not itself trigger vertical market power, and that the prohibition against Iberdrola owning generation in its T&D territory addresses market power concerns.

While the RD allows Iberdrola to develop wind resources outside of the Energy East service area, it finds that Iberdrola's assets as a potential wind energy developer in New York should not be deemed "benefits" of the proposed transaction, and therefore should not figure prominently in the Commission's determination.

Since Iberdrola has invested in wind farms in areas where it does not own a distribution utility (Pennsylvania, Oregon, and Texas), rejecting its Energy East acquisition would not impede Iberdrola from investing in New York, the RD adds.

New York's backlog of wind project proposals already exceeds the state's capacity to absorb those projects' projected output, the RD pointed out, and the economics of wind development should be just as attractive to providers other than Iberdrola who would not insist on conditions such as the proposed transaction.

The RD favors not deciding the fate of Energy East ESCO referral programs in the merger proceeding, because there are several open dockets addressing relevant proposals.

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make the six lines used to monitor stability all CREs or CSCs. Other CREs which could be considered, while not necessarily studied by Deutsche Bank, include San Angelo - Menard 138 kV and Abilene South to Putnam 138 kV.

Whittle thinks that as CREs are determined it would be best to add them as soon as possible. While the protocols read that TAC should have a seven-day window to take action, they do not specify that the notice must be given at a regularly scheduled TAC meeting. Thus Whittle suggested that as ERCOT determines the CREs, they should be sent to TAC and approved or questioned as quickly as possible through email or conference call, on an ongoing basis if necessary.