Energy Choice Matters

June 20, 2008

FERC Approves More Flexible Capacity Release Rules for AMAs

FERC acted to improve the efficiency of its capacity release program by permitting market-based pricing for short-term capacity releases, and relaxing its prohibition on tying and its bidding requirements for certain capacity releases to facilitate asset management arrangements (AMA).

The final rule (RM08-1) eliminates the price cap on capacity releases of one year or less, which will enable shippers to offer competitively-priced alternatives to pipelines' negotiated rate offerings and allocate capacity to those that value it the most. The price cap elimination will also provide more accurate price signals concerning the market value of pipeline capacity, FERC said (Matters, 5/19/08).

Recognizing that AMAs result in ultimate savings for end-use customers by providing for lower gas supply costs and more efficient use of the pipeline grid, the Commission exempted releases used to implement AMAs from its prohibition on tying and the bidding requirements of section 284.8.

The final rule also extends the exemptions from the prohibition against tying and from bidding granted to AMAs to capacity releases made to a marketer participating in a state approved retail access program, finding that such programs provide benefits similar to AMAs.

FERC modified the definition of AMAs to relax the delivery obligation of the replacement shipper to the releasing shipper and to permit supply side AMAs. The Commission also clarified that short term AMAs may be rolled over without bidding. Under the final rule, the price ceiling does not apply to any consideration provided by an asset manager to the releasing shipper as part of an AMA.

The revisions, FERC explained, will further enhance the efficiency of AMAs by allowing greater flexibility for parties to customize arrangements to meet unique customer needs while at the same

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Universal Gas & Electric Contract Includes Termination Charge If Regulator Cancels Contract

While several customers have filed docketed complaints at the Michigan PSC against Universal Gas & Electric, a complaint filed by International Specialty Tube revealed another wrinkle in UG&E's contract, which would let the marketer charge an early termination fee on customers even where the contract is canceled by regulators (U-15606).

Many complaints fielded by Commission staff regard marketing and representation of rates, and the PSC has opened a formal investigation of those issues (Matters, 5/21/08).

While International Specialty Tube made similar allegations, it also reported that, per UG&E's contract, UG&E could attempt to assert that it is owed early termination damages from International Specialty Tube even if the Commission were to revoke UG&E's license or cancel the contract.

Specifically, UG&E's early termination clause specifies that the customer must pay UG&E early termination damages in the event UG&E terminates the agreement due to one of eight circumstances, or the customer initiates termination.

One of those eight circumstances is that, "Universal is required by law or regulation or judicial, regulatory, administrative or other legal order or process to cancel this Agreement."

Under International Specialty Tube's reading of the clause, that could allow UG&E to assert it has a right to collect a termination fee even where the PSC cancels the contract.

"The provisions contained in the Application/Agreement that provides for Early Termination Damages if 'Universal is required by law or regulation or judicial, regulatory, administrative or other

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New England Natural Gas Files Fixed Price Option

New England Natural Gas filed its tariff with the Massachusetts DPU to implement a fixed-rate option for residential and small commercial default service customers, as agreed to in a rate settlement (07-46).

The Fixed Price Option (FPO) Pilot Program is available to all customers in rates R-1, R-2, R-3, R-4, G-41 and G-51, and would offer a fixed-price during the winter heating season (November through April) at a premium of $0.02 per therm above the LDC's otherwise applicable Gas Adjustment Factor. The premium is meant to reduce risk to customers not participating in the FPO pilot. Customers choosing the FPO must remain on the rate for the entire winter season.

In order to ensure further that non-participants will not subsidize FPO customers, New England Natural Gas will monitor enrollment. In the "unlikely" event that 25% of eligible customers choose to enroll, the LDC will evaluate the possible impact and consider suspending new enrollments after consultation with the Attorney General and Low-Income Energy Affordability Network.

National Grid Submits Latest Basic Service Rates

National Grid submitted to the Massachusetts DPU the basic service rates for industrial customers for the quarter of August through October (99-60):

Industrial (G-2, G-3) Variable Rates (¢/kWh)

	NEMA	SEMA	WCMA
August	15.859	16.532	15.654
September	14.454	15.275	14.155
October	14.721	15.553	14.411

Industrial (G-2, G-3) Fixed Rate (¢/kWh)

August - October	15.029	15.802	14.759

FERC Denies Complaint on Reliability Capacity Services Tariff

FERC found the Reliability Capacity Services Tariff to be just and reasonable through June 1, 2008, denying a complaint (EL08-13) from Dynegy and Reliant to implement the alternative Reliability Capacity Compensation Mechanism (RCCM) during that time, and also terminated its section 206 investigation in EL08-20.

On June 1 the California ISO's Transitional Capacity Procurement Mechanism (TCPM) became effective as a backstop capacity procurement mechanism until the Market Redesign and Technology Upgrade starts.

FERC noted that it reaffirmed the RCST as just and reasonable on December 20, 2007, and there has been no demonstrable change in circumstances that would render the RCST unjust and unreasonable during the five-month period since then.

The Commission also agreed that the spring season generally does not coincide with peak CAISO demand, and, therefore, the CAISO would not likely rely significantly on the RCST backstop mechanism during the spring.

Thus, the "most efficient solution" is to continue the RCST for the brief five-month period until June 1, 2008, FERC ruled.

While the assumptions underlying the RCST rate would become increasingly dated as time passes, and the RCST would accordingly cease to be just and reasonable, the recently conditionally-approved TCPM has alleviated those concerns, FERC observed.

FERC added that evidence filed in the TCPM proceeding suggests that, pre-summer, the original RCST price continues to lie within the reasonable range (between the fixed costs of existing generation and the cost of new entry).

The Commission determined that the RCCM would significantly alter the RCST since its rate of $145.54/kW-year is based on the cost of new entry. FERC has repeatedly found that, "it is not reasonable to base backstop capacity pricing on the cost of new entry."

FERC accepted a CAISO compliance filing to extend the RCST through May 31, 2008.

Generation Costs to Keep Rising, FERC Reports

Recent nationwide increases in wholesale electricity prices, "may be the beginning of significantly higher power prices that will last for years," FERC staff reported in a sobering evaluation of the rising costs for new generation.

Staff and Commissioners noted that wholesale prices are rising comparably in both RTOs and unorganized markets, and that variations in increases stem from existing fuel sources (such as plentiful hydropower in the Northwest).

The two major factors pushing the costs of electric generation higher are increased fuel costs and increased cost for new construction, staff reported, with uncertainty regarding greenhouse gas regulation contributing as well.

"Overall, the most likely outcome is that natural gas will continue to be the leading fuel for new capacity over the next half decade," staff observed.

"We must accept the U.S. cannot make the massive investments necessary to assure security of our electricity supply, make additional large investments to confront climate change, and lower electricity prices at the same time," Chairman Joseph Kelliher argued. "If we try to do all three, the result will likely be failure," Kelliher cautioned.

"[C]ompetition policy is best suited to address the hard realities we are confronting today," Kelliher added.

Staff reported that the "first round" of demand response may be both the cheapest and fastest way to improve capacity margins on many systems. Staff pegged the cost of first round demand response at $165/kW, far less than any generation options.

Cost estimates also show that the first round of energy efficiency may be available for about 3¢/kWh. Commissioner Jon Wellinghoff noted that even when tripling the cost of efficiency to 9¢, it would still be comparable to just the fuel costs of many new and existing generators, questioning why efficiency is not being pursued more actively. Wellinghoff praised ISO New England's forward capacity auction which has allowed energy efficiency to bid into the market, and suggested PJM could benefit from a similar mechanism.

Commissioner Philip Moeller added that customers need to be empowered with price signals to take control over rising costs, but noted such a policy is a retail issue.

Briefly:

Stand Energy Tells PUCO to Subpoena NYSEG to Verify Slamming Allegation Against USG&E

Stand Energy urged PUCO to subpoena NYSEG to verify its allegation that U.S. Gas & Electric slammed two of its New York customers and thus should be denied an Ohio gas marketer's license (08-0601-GA-CRS). U.S. Gas & Electric had noted that Stand Energy had not cited any evidence or finding substantiating its allegations (Matters, 6/17/08). Stand Energy claimed it was not possible during the expedited timeframe to obtain evidence in writing, and added that it, "did not design the regulatory process that exists in New York State for dealing with such prohibited conduct." Stand Energy, "is not responsible for the lack of publicly available documentation on the customer slamming that occurred in New York State," it told PUCO. "If the PUCO issues a subpoena to NYSEG, Stand Energy Corporation believes the information presently available to to [sic] NYSEG regarding U.S. Gas & Electric is more likely to be made available to the PUCO," Stand argued.

Michigan PSC Satisfied Regarding Line Losses

Consumers Energy submitted additional materials to the Michigan PSC showing how it has implemented new lines losses in bundled rates (U15245), and the PSC concluded the supplemental tariff filing addresses the concerns of Energy Michigan regarding whether the losses had been properly implemented in bundled rates in addition to retail access rates (Matters, 6/19/08).

FERC Approves FCA Results

FERC accepted the results of ISO New England's Forward Capacity Auction (ER08-633) and dismissed challenges to the previously-accepted methodology for resetting the Cost of New Entry (Matters, 4/29/08).

Rendell Selects Two for PUC

Pennsylvania Gov. Ed Rendell nominated Wayne Gardner and Robert Powelson to the PUC to replace Chair Wendell Holland and Terrance Fitzpatrick, respectively. The nominations require senate confirmation. Gardner spent 22 years at PECO before retiring in 2002 and was an executive at Franklin Fuel Cells from 2002 to 2005. Since then he's been a management consultant and entrepreneur in specializing in power generation, renewables and clean energy technologies. Gardner would replace Holland, whose term expired, for a nearfull term running through April 1, 2013. Robert Powelson has been CEO of the Chester County Chamber of Business and Industry since 1995 and previously served on the staff of former U.S. Rep. Curt Weldon. Powelson would complete Fitzpatrick's term which expires April 1, 2009. Fitzpatrick resigned from the PUC last summer and is now general counsel at the Electric Power Generation Association.

Reliant Contest Offers Free Power for "Life"

Reliant Energy will give away $60,000 in electricity, or a lifetime's worth, to one lucky Texas customer as part of a series of contests launched yesterday. The Electricity for Life sweepstakes drawing carries a $60,000 bill credit grand prize, with five weekly winners receiving $15,000 in credits and 35 daily winners receiving $3,000 in credits. Reliant also announced Houston's Most Energy INefficient Home Contest which is open to Houston-area homeowners and requires contestants to submit a one-minute video or five photos with a 100-word description about any ingenuous or offbeat energy efficiency measures. Three grand prize winners will receive $2,500 in home energy efficiency improvements, a $1,200 Reliant bill credit, and 60-days of support from Reliant energy experts (www.reliantpowerzone.com/efficiency). TXU is offering a similar contest (Matters, 6/10/08).

FERC Denies Maine PUC's Rehearing Request over Boralex Market Power Analysis

FERC denied rehearing of its order accepting Boralex's updated market power analysis (ER01-2569 et. al.) as requested by the Maine PUC. FERC struck from the record a letter from Constellation to the PUC which the PUC claimed showed the Northern Maine market is not competitive (Matters, 2/20/08), because FERC is reluctant to chase a "moving target" by considering new evidence presented for the first time at the rehearing stage. FERC also found that even if the letter had been accepted, Maine failed to show that Northern Maine should be the relevant market rather than the Maritimes Control Area because the PUC presented no data showing the existence of binding transmission constraints.

PSEG Favors PJM Grid Reforms

PSEG praised several interconnection queue reforms that PJM has proposed at FERC (EL08-36-001), including cluster studying of queued projects, increased Feasibility Study deposits, studies of the primary and secondary Points of Interconnection, cost allocation between queues, and scheduling of the scoping meeting. Under the cluster approach, PJM would collectively study the projects contained in a single queue for the Feasibility and System Impact Study phase to determine the minimum amount of Local and Network Upgrades required. For upgrades less than $5 million, PJM would allocate costs for required upgrades to all projects contributing to the reliability criteria violation, regardless of queue position, based on the project's contribution to the need for the upgrade. For upgrades costing $5 million or more, the cost of the upgrades would be allocated in accordance with queue order rather than on a socialized basis within a queue cluster. Deposits would vary depending upon when a project enters the queue during the three-month window and the size of the project, with a cap of $130,000. The current deposit is only $10,000. PSEG still sees a need to address several issues but believes they will be worked out in stakeholder forums. Those issues include putting in place increased deposits at both the System Impact and Facilities Study stage, enhancing the requirements for retaining a queue position (e.g. focusing on the appropriate milestones in the process) and finalizing, for cost allocation purposes, the precise mechanism for determining projects' contribution to the need for an upgrade within a cluster.

FERC Affirms Order 890

FERC reaffirmed Orders 890 and 890-A and provided clarification or affirmation of the methodology for calculating ATC; standardization of energy and generation imbalance charges; rollover rights; and rules regarding the designation and undesignation of network resources. FERC also accepted the California ISO's the Order 890 transmission planning process compliance filing.

APX Debuts New Web-Based Scheduling-Settlement Program

APX released APX MarketSuite, a new platform solution that provides market participants with a data infrastructure for ISO transactions with functionality for all scheduling and settlement business processes. The product is web-based, and APX claims its ease of use facilitates rapid market entry.

Surges and Circuits

Power Surges

N.Y. PSC Staff: RD in Iberdrola-Energy East acquisition case adopts Staff's view the merger does not provide ratepayer benefits and should be denied.

Short Circuits

Universal Gas & Electric: While we don't support general prohibitions against contracting parties agreeing to whatever terms they see fit, Universal's provision in at least one supply contract which calls for the customer to pay a termination charge when Universal, and not the customer, cancels the contract because, "a change in law requires a change to this Agreement that Universal does not agree to," just strikes us as unfair and not a good way to treat customers. While it may be appropriate for marketers to be able to end contracts due to a change in law or regulation, it's unjustifiable to make the customer pay a termination fee for the marketer's decision in such cases. We're not claiming that Universal has ever used the provision, but it shouldn't even be in the contract.

FERC AMA Rule ... from 1

time ensuring that capacity releases that qualify for the exemptions from tying and bidding granted in the rule are bona fide AMAs.

FERC also ruled that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Allowing such arrangements reflects the fact that in the storage context, storage capacity is inextricably linked to storage inventory, the Commission noted. By permitting the tying of releases of storage capacity to conditions on storage inventory, efficient use of storage capacity will be enhanced, FERC found, while also ensuring that releasing shippers will have adequate storage inventories for the winter.

FERC declined a request from LNG importers to allow linking an LNG terminal throughput agreement and/or sale of gas at the outlet of a Natural Gas Act Section 3 LNG terminal to a prearranged release of transportation capacity on a pipeline that is directly connected to the terminal. LNG importers had argued a link is needed because importers, to avoid having gas stranded at LNG terminals, frequently maintain, on pipelines interconnecting to the terminals, firm capacity that mirrors their send-out capability at the terminal. LNG importers argued that capacity at an LNG terminal can be virtually useless and even a liability unless accompanied by related pipeline capacity.

But FERC found that importers did not provide adequate detail on the types of transactions for which they sought a tying exemption, or how far downstream they sought to have the exemption apply.

The Commission is open to considering the issue on a case-by-case basis if presented with a fully justified proposal.

Commissioner Philip Moeller dissented in part on the LNG issue, arguing that FERC needs to give importers regulatory certainty. Moeller expressed concern that LNG importers may elect to serve other worldwide markets without regulatory obstacles in light of FERC's decision.

UG&E Complaint ... from 1

legal order or process to cancel this Agreement' is unconscionable," International Specialty Tube blasted.

International Specialty Tube told the PSC its early termination fee would be $51,498.87. International Specialty Tube has completed about two years of a five-year term and wants to return to MichCon.

While not part of the complaint, another one of the eight circumstances that would allow UG&E to cancel a contract while still asserting the right to a termination charge would be if, "a change in law requires a change to this Agreement that Universal does not agree to."