Energy Choice Matters

August 4, 2008

"Hotel California" De-list Policy Would Conscript Generation, New England IPPs Claim

Proposed revisions regarding the ability of generating units to temporarily de-list under ISO New England's Forward Capacity Market would create a "Hotel California" scenario for generators identified as being needed for local reliability, PSEG Power claimed in comments filed at FERC (ER08-1209).

PSEG compared the proposal, which would pay units prevented from temporarily de-listing their Net Risk-Adjusted Going Forward Cost, to the "nightmarish resort" in the Grammy-winning Eagles song, from which "you can check out anytime you like, but you can never leave." Under the tariff, any requests to de-list would be met with, "protracted delays and punitive compensation rules," regardless of the legitimate commercial reasons that would justify de-listing, PSEG argued.

Additionally, retirement would be limited to entities providing almost four years advance notice.

"The imposition of these burdens would be at odds with the supposedly voluntary character of ISO-NE RTO markets. Moreover, it will likely create a disincentive for new entry, particularly in Connecticut where ISO-NE has rejected all de-list bids, declaring all of the generation as being needed for reliability," PSEG contended.

State regulators and load representatives, however, generally favored the proposal, though they urged that FERC and stakeholders should have more explicit authority to challenge a resources' claimed going forward costs under the plan.

The Connecticut DPUC explained that the entire FCM structure would be undermined by paying generators needed for reliability more than their FCM offer to be a capacity resource. Such higher payments above going forward costs would, "invite gaming and manipulation," DPUC claimed, since any resource that anticipates that it may be needed for reliability would deliberately seek to avoid

... Continued Page 6

Michigan PSC Staff Recommends Revocation of Universal Gas & Electric AGS License

The "huge number and very serious nature" of the allegations that the Michigan PSC Staff levied against Universal Gas & Electric in testimony filed Friday, "demand nothing less than revocation of Universal's license," Staff asserted (U-15577, Matters, 5/21/08).

Staff also urged that customers receive full restitution for any financial harm potentially caused by Universal, such as higher prices paid due to allegedly unauthorized switches.

"This is not a case about a few inadvertent omissions or a handful of relatively minor mistakes or errors that can be readily dismissed," Staff alleged, claiming that, "Universal knowingly and defiantly committed a multitude of serious violations despite repeated Staff admonishment to stop."

"Universal has demonstrated it will do what it wants regardless of the State laws and Commission rules governing its conduct," Staff further alleged, citing "thousands" of alleged violations.

"If Universal's AGS license is not removed, Staff is concerned it may well initiate the demise of the entire gas choice program," Staff testified. If improper behavior is not appropriately punished, other AGS companies may be tempted to circumvent the rules and embrace improper conduct to achieve short-term gain to the detriment of other AGS firms abiding by the rules governing the Michigan gas choice program. Ultimately, current and prospective customers will lose faith in AGS firms and the Commission's ability to govern their actions, Staff argued.

... Continued Page 7

BGE Recommends Seasonal Shaping of Some SOS Prices

Baltimore Gas and Electric proposed a revenue-neutral seasonal price shaping mechanism to produce a more appropriate retail market price for its SOS customers that take service under a seasonal rate tariff.

BGE considers the plan an outgrowth of its previous Time of Use price shaping mechanism, which shapes prices into three TOU periods. The TOU shaping was prompted by wholesale bidders offering a single, constant price across the various TOU periods despite their option to time differentiate their pricing.

BGE reported that seasonal rates would be based on historic spot energy prices, and capture the market price difference between the summer and non-summer seasons.

Seasonal price shaping would ultimately yield more efficient consumption behavior, BGE said, by driving consumer demand lower in the on-peak periods.

"This will ultimately reduce electric commodity prices, facilitate a reliable electric grid, improve the environment by displacing generation, and help reach the EmPOWER Maryland goals," BGE told the Maryland PSC.

The recommendation, which BGE proposed only for its service area, was a non-consensus item omitted from Staff's report on the Procurement Improvement Process (Matters, 7/29/08).

Conn. IRP Sees Benefits of Long-Term Contracts for Default Service

While the immediate focus of resource acquisition procurement actions in Connecticut should be demand-side management and renewable energy credits, an Integrated Resource Plan authored by the Connecticut Energy Advisory Board supports bilateral contracting as a means to stabilize or reduce standard service rates, and recommended consideration of combining bilateral energy and REC contracting. The DPUC will review the plan in docket 08-07-01.

Use of bilateral and long-term generation contracts within wholesale markets would provide price stability or price reductions to mitigate the extent to which Connecticut's electric costs are tied to natural gas prices, the plan noted.

The DPUC should direct the EDCs to create a pilot contract solicitation that allows the DPUC to evaluate the potential of contracting for bundled RECs, energy and capacity to further reduce REC costs, CEAB added.

CEAB does not recommend the immediate solicitation of any replacement capacity within Connecticut, but noted that since there is significant economic pressure (especially due to changing environmental regulation) on certain existing generation units which may retire, the recommended demand-side management, REC, and bilateral contracting resource acquisitions should be based on the assumption that some retirements may occur.

Utilities' newly-received authority (Matters, 8/1/08) to buy RECs on long-term contracts will likely secure RECs at prices substantially below the alternative compliance payment, CEAB noted (for example, $30 to $35 per MWh rather than the ACP of $55).

Accordingly, a "significant portion" of the uncommitted standard service REC requirements for 2014 and beyond should be obtained through long-term contracts, CEAB recommended.

MISO Monthly Capacity Auction Needs Work to Reflect Reality of Retail Choice

The Midwest ISO's revised Module E resource adequacy approach still needs to be refined to account for retail choice, several suppliers and distribution companies told FERC in comments on a MISO compliance filing (ER08-394).

The voluntary monthly auction designed to supplement the bilateral capacity market fails to include provisions to address the impact of load switching on LSEs that participate in the auction, and auction rules may not be appropriate or workable for LSEs that are POLRs in retail choice states, Ameren pointed out.

For example, the June 25 compliance filing fails to demonstrate how LSEs will not be forced to pay excess costs because of load switching, Ameren noted.

Ameren and FirstEnergy explained that competitive suppliers will typically not forecast load that is not yet under contract, while POLRs have no advance notice of customers returning to default service, and accordingly cannot incorporate such load in their Module E forecasts. It would be unreasonable to penalize the POLR for new unaccounted-for load due to a customer's decision to return on short notice, Ameren reasoned.

There is no provision in the Midwest ISO's proposal for reallocating resource adequacy obligations amongst retail suppliers who gain or lose customers in the period between the Resource Planning Deadline and the end of the operating month, FirstEnergy added. Thus, an LSE that has lost load relative to its forecast will have procured and paid for capacity that is effectively used, at no charge, by another LSE who has gained load.

Such cross-subsidization amongst LSEs is economically inefficient and creates the potential for gaming behavior, FirstEnergy cautioned. Under this current construct, competitive retail suppliers that strive to provide accurate load forecasts can be put at a competitive disadvantage to those retail suppliers that underforecast.

FirstEnergy urged the Commission to require the Midwest ISO to include flexible language in its tariff to provide for retroactive reallocation and financial settlement of resource adequacy obligations amongst suppliers in regions with retail competition.

Ameren suggested that the Midwest ISO develop a process whereby it works with the Local Balancing Authorities who have retail switching in their areas to compare the aggregate of the LSE load forecasts to the LBA-level forecast. To the extent the aggregated LSE load forecasts are lower, and the unaccounted-for load cannot be properly identified as belonging to an LSE, the amount of uncovered load could be included in the voluntary monthly auction. But MISO would need to develop clear rules that address who determines whether there is a shortfall and how the ISO accounts for the shortfall in its auctions. The rules would also need to address which entity is responsible for acquiring the additional resources, and who must pay for those resources, Ameren noted.

Reliant Energy reiterated its concerns about individual LSEs being responsible for their own forecasts (rather than the ISO or distribution utilities), since the efficacy of the Financial Settlement Charge as a compliance mechanism will be undercut if LSEs are able to effectively circumvent the risk of being assessed a penalty by intentionally adjusting down their Forecast LSE Requirement to match their Resource Plans. MISO has no means under its Tariff to correct an LSE's erroneous self-determination of its Forecast LSE Requirement, Reliant pointed out.

Reliant also suggested that MISO implement a Capacity Tracking Tool, that would track both qualified resources and each LSE's capacity obligation in the form of a "ticket" representing the peak load contribution of a meter to ensure that retail switching load is not "lost" between LSEs. This "ticket" mechanism has worked in PJM and other ISOs, Reliant noted, and would ensure that each MW of load is assigned a Planning Resource so that no load is left unaccounted for in retail choice states where load can switch regularly.

The Coalition of Midwest Transmission Customers echoed concerns raised by other stakeholders (Matters, 7/31/08) that the $80,000 per MW-month Financial Settlement Charge will likely to create perverse incentives and harm bilateral markets. Generation owners will be more reluctant to offer capacity in bilateral markets at reasonable prices when the prospect of withholding and capturing payments as high as $80,000 per MW-month through MISO's capacity auction remains an option, the customer coalition reasoned. The customer group also raised concerns that the auctions lack tangible measures to monitor and mitigate market power.

The customer coalition also argued that the auction timeline, which could exclude a resource which doesn't clear the auction from bilaterally contracting for energy and capacity for up to 13 days, would either significantly disrupt the operation of bilateral markets in the Midwest, or result in planning resources choosing to never participate in the auction, rendering it an academic exercise.

The customer group suggested that the monthly auction pay generators their offer price instead of a uniform, marginal clearing price since the auction is voluntary. Buyers would be charged a uniform price set at the MW-weighted average of all offers that clear in the auction.

FirstEnergy told FERC it is "convinced" an energy only market will not produce long-term resource adequacy in retail choice states that have undefined long-term LSEs, specifically Electric Distribution Companies that have POLR auctions. Competitive suppliers, who, at the longest, have three-year contracts with customers, will not pursue long-term bilateral contracting, which is essential to encourage sufficient investment in resources, FirstEnergy argued.

FirstEnergy is "particularly concerned" that an energy only market with scarcity pricing will ultimately be rejected by key stakeholders at the time when scarcity prices begin to manifest.

PSEG Earnings Rise on Merchant Generation

Non-GAAP operating earnings at PSEG rose to $324 million in the second quarter, from $281 million a year ago, on gains at merchant generator PSEG Power.

PSEG Power reported operating earnings $240 million for the quarter, up from $187 million a year ago, due to re-contracting at higher prices, as well as realization of capacity prices under the Reliability Pricing Model for the full quarter versus only a month in last year's second quarter. Higher pricing was also supported by a 7.6% increase in production, with the nuclear fleet recording a 90.5% capacity factor for the quarter.

The IPP's gross margin per megawatt-hour improved in the second quarter to $54/MWh from $47 a year ago. Higher prices for energy and capacity compared to last year are expected to continue to support forecast improvement in PSEG Power's 2008 operating earnings, executives said.

PSEG Power has about 85% to 95% of its coal and nuclear output hedged for next year, with 45% to 55% hedged through 2010. The IPP remains largely open to the market in 2011, with hedges covering only 15% to 25% of anticipated coal and nuclear generation.

While PSEG Power's new build proposals did not clear the most recent RPM auction, it remains committed to building new capacity provided there is reasonable RPM pricing, and expects to bid in the May 2009 auction.

Parent PSEG recorded a $150 million loss on a GAAP basis for the quarter, mostly due to a $490 million charge related to certain leveraged leases being challenged by the IRS. PSEG had recorded a GAAP profit of $275 million in the year-ago quarter.

Briefly:

FirstEnergy Competitive Sales Dip in Q2

Quarterly net income from competitive energy services at FirstEnergy fell $76 million to $66 million, on a $35 million decline in competitive electric sales. Quarterly competitive retail generation sales fell 16%, or 0.5 million MWh, to 2.7 million MWh, reflecting the impact of weather and fewer renewals of competitive C&I contracts in PJM. Wholesale electricity sales also declined 0.5 million MWh, or 8%, due in part to an 8% decrease in generation output. Overall, FirstEnergy second quarter earnings fell 22% to $263 million, versus $338 million a year ago.

Maine PUC Posts Draft Green Bill Insert Agreement

The Maine PUC posted a draft standard agreement and terms and conditions to govern competitive electric suppliers using utility bill inserts to market green products (Matters, 5/19/08). Competitive suppliers would be responsible for enrolling customers onto green products, rather than the utility having that responsibility under a check-off process or similar on-bill method as suggested by marketers. The draft will be discussed at an August 13 working group meeting.

First Choice Power to Settle Renewal Dispute

First Choice Power Special Purpose would pay a $500,000 administrative penalty under a settlement with the PUCT Staff to resolve an investigation into automatic contract renewals (35947). The REP had sent renewal notices to its residential and small commercial customers which offered to renew customers' contracts for a minimum term of at least one year, and would be effective if the customer did not take action by a specific, disclosed date, which Staff believes contradicts the substantive rules which limit automatic renewals to 31 days. The settlement is subject to Commission approval.

D.C. PSC Issues Revised Customer Bill of Rights NOPR

The District of Columbia PSC issued its latest revised NOPR to update the residential consumer bill of rights applicable to competitive suppliers and utilities (FC 712, Matters, 5/14/08). The latest draft keeps a three-day rescission period, rather than 10 days as proposed by the People's Counsel. The bill of rights includes rules for bill format and presentation, supplier contract terms and conditions, advertisements, and methods of authorization and enrollment.

Mich. Staff Would Deny Rehearing on School Credit, POR

While Michigan PSC Staff argued that the Commission made an appropriate policy decision to implement a General Educational Institution credit at Consumers Energy, Staff reported that it cannot attest to the validity of specific costs for educational institutions since a cost of service analysis for the class was not prepared on a separate basis in the case (U-15245). Thus, Staff suggested that in Consumers' next electric rate case Consumers must file a cost of service study to include educational institutions as a separate customer class. That would allow Staff to evaluate claims made by Energy Michigan and Constellation NewEnergy in rehearing requests that the GEI credit would provide duplicate benefits to customers eligible for seasonal rates (Matters, 7/14/08). Staff also opposed rehearing requests to immediately study and implement Purchase of Receivables, claiming that the requests merely restate prior arguments rejected by the Commission in its order.

ConEdison Solutions Wins NYPA Efficiency Contract

ConEdison Solutions won a contract through competitive bidding to provide energy efficiency services to the New York Power Authority. Under the contract, ConEdison Solutions will provide energy efficiency upgrades, including the implementation of lighting, motors and controls projects, in selected facilities in southeast New York, which includes the five boroughs of New York City and Westchester County.

Illinois Power Agency Gets Extension for Procurement Filing

The Illinois Commerce Commission granted the Illinois Power Agency an extension until Sept. 3 to file its 2009-2010 SOS procurement plan (08-0450, Matters, 7/25/08).

PUCT OKs Plan to Pass Oncor Service Quality Rebates Through REPs

The PUCT approved a service quality plan for Oncor (35546) under which customer rebates would be paid by flowing credits through customers' REPs (Matters, 5/21/08). Oncor agreed to use Texas SET code CRE027 to pass through the service quality rebates related to the agreed upon reliability standards and code CRE030 to pass through payments related to the agreed upon customer service standards.

Midwest TDUs Urge FERC for Action on RSG Complaint

The Midwest TDUs filed a motion for "prompt" FERC action on complaints regarding real-time revenue sufficiency guarantee charges in the Midwest ISO, noting that almost a year has passed since the initial complaint and refund-effective date (EL07-86-003 et. al.). While FERC held the paper hearing process in abeyance pending stakeholder talks, it's been six months since a MISO informational filing on Feb. 1, and the TDUs want the paper hearing process to commence.

PUCO Names Federal Energy Advocate

PUCO Chairman Alan Schriber appointed longtime Commission staffer Daniel Shields as Ohio's Federal Energy Advocate, a new position created under SB 221. Shields, among other things, is responsible for examining the value of Ohio's participation in RTOs.

IPPNY Urges Review of PJM-NYISO Seam Charges

The Independent Power Producers of New York urged FERC to take action to eliminate pancaked transmission charges between the New York ISO and PJM control areas which limit the ability of market participants to arbitrage prices between the areas, and results in many hours when otherwise economic transactions are not scheduled. IPPNY made the recommendation in commenting on NYISO's filing to limit market participants from scheduling transactions over circuitous Scheduling Paths around Lake Erie in order to take advantage of a seam (ER08-1281, Matters, 7/31/08). IPPNY also suggested that NYISO to enter into discussions with the Ontario's Independent Electricity System Operator to eliminate export transaction fees, and that FERC facilitate implementation of four Phase Angle Regulators on the Ontario-Michigan boundary.

Fuel Costs, Synfuels Losses Weigh PPL Supply Earnings

Net income from PPL's competitive supply business fell to $95 million from $137 million a year ago on higher average fuel prices, lower baseload generation, higher operating expenses, and synfuels-related losses. Although PPL saw higher east and west energy margins, depreciation and synfuel losses offset any gains. Increased margins expected in the second half of this year as a result of higher-valued wholesale energy contracts and higher expected baseload generation are expected to be offset by higher coal commodity and transportation costs, and weaker results from PPL's marketing and trading activities as a result of reduced liquidity in certain energy markets. PPL expects a "significant improvement" in energy margins in 2010 as the full-requirements supply contract between PPL EnergyPlus and PPL Electric Utilities will expire at the end of 2009. PPL told analysts that it will likely apply to purchase post-2010 default service on a multi-year portfolio plan, rather than procuring supply for only a single year as PPL is doing in its 2010 "bridge" plan through a series of of RFPs.

Earnings from Unregulated Operations Up at Ameren

Core (non-GAAP) earnings from Ameren's non-rate-regulated operations rose $27 million in the second quarter to $77 million on higher realized electric margins. GAAP earnings for unregulated operations in the second quarter of 2008 were $98 million, including unrealized mark-to-market gains and other special items. The benefit of those items more than offset the costs of the Illinois comprehensive electric rate relief agreement in the second quarter of 2008. Adjusted quarterly earnings (excluding non-qualifying hedges and other items) for parent Ameren Corp. were $142 million, compared with $138 million a year ago.

Hotel NEPOOL ... *from 1*

being chosen in the forward auction so that it could increase its revenues through a more remunerative reliability must-run type arrangement.

As the Connecticut Municipal Electric Energy Cooperative put it, paying generators needed for reliability more than their FCM offer at which they are willing to operate, "would allow them to exercise local, reliability-based market power."

Since the ISO's proposal would essentially pay generators what they bid into FCM, load representatives may as well quote another line from Hotel California by countering that generators "are all just prisoners here, of [their] own device," since generators simply receive their own bid.

But generators explained that market rules under FCM may not allow them to reflect their true costs in De-list Bids, by limiting Static De-list Bids to a formulaically determined "net risk adjusted going forward and opportunity costs" and Dynamic De-list Bids to an arbitrary cap of 0.8 times Cost of New Entry. Such "market mitigation" restrictions do not permit all resources to reflect their true risk-adjusted costs in their De-list Bids and do not account for known and measurable changes that occur in the time between when the resource submits its Bid and when the ISO commits the resources for reliability, Dominion Resources pointed out.

The FCM revision thus proposes to "conscript" generation resources into the capacity market at prices below their cost-of-service based on the "fiction" that all De-list Bids were voluntary and accurately reflect their actual costs, the New England Power Generators Association observed.

But the DPUC asserted that under the proposed market rules, "no resource will be required to provide capacity services at non-compensatory rates."

Generators urged FERC to allow de-listed units to update their De-list Bids to include all reasonable and verifiable costs of providing reliability services; or, alternatively include a risk premium in their De-list Bids to reflect the fact that they may be prevented from de-listing for reliability reasons and will be unable to manage the risk that their costs will increase.

Generators also protested that the ISO has "shoehorned" security services into the FCM, which is strictly a resource adequacy market. "This approach is unjust and unreasonable because it provides no compensation for the locational scarcity value of the resource - essentially confiscating that scarcity value," NEPGA explained.

Generators favored a market-based approach forwarded by NRG Energy that was rejected at the stakeholder level.

NRG suggested creating Local Reconfiguration Auctions to: (1) incent either transmission solutions or new resource entry that will allow a resource with a rejected Static or Dynamic De-list Bid to de-list; or (2) establish a market-based mechanism for price formation that reflects the locational value of the system security reliability service that a resource with a rejected Static or Dynamic De-list Bid is being required to involuntarily provide.

NRG argued its proposal obviates concerns about so-called "toggling" between the higher of market or cost-of-service rates, and would produce a market price that most accurately reflects the locational value of the system security being provided.

While generators favored a market-based approach, they alternatively suggested full cost-of-service treatment instead of the going-forward cost proposal. The proposed going-forward cost compensation for units prohibited from de-listing presents substantially more opportunities for load to "coast" along without solving localized reliability issues, NEPGA cautioned, while full cost-of-service treatment would provide greater incentives for load to solve local security concerns. The going-forward cost approach fails to provide any process to incent transmission upgrades or new resource entry needed to resolve the locational reliability concern, NRG added, and in fact provides a strong disincentive by artificially suppressing payments to resources needed for local security and reliability far below the value of those services.

But given current and recent earnings from generators in organized markets, we'd expect load representatives to cite another Joe Walsh lyric:

I can't complain but sometimes I still do,
Life's been good to me so far

Universal License ... from 1

Staff proposed that should the Commission grant revocation, customers returned to their LDC should not be penalized in any way if they elect to contract with another AGS, and should not be required to remain with their LDC 12 months upon such transfer back to the utility.

The maximum applicable penalties should be imposed on Universal, Staff recommended, with fines starting at $20,000 for the first offense and escalating for additional violations up to $70,000 for slamming violations. Staff argued that the Commission was not limited to the remedies listed in specific choice tariffs and holds broader authority to impose penalties for violations of statutes and regulations.

Staff alleged that Universal has switched customers from other gas providers without customer authorization (including instances in which a confirmation letters was allegedly not timely sent to customers); has marketed its product in a misleading, fraudulent, and deceptive manner; and has failed to make a good faith effort to resolve customer disputes.

In particular, Staff alleged that Universal's practice of only terminating residential and small commercial contracts, and only switching a customer to a newly chosen provider, upon receipt of a $250 early termination fee violates tariff provisions which permit the customer to return to the utility or another supplier at any time. While an AGS can pursue its termination fee in court, it cannot hold customers "hostage" by preventing customers from switching until receiving any such fee, Staff insisted.

Staff alleged 1,047 Universal customers, "were held hostage and obstructed from continued participation in the choice program by Universal."

The Staff also alleged that Universal's requirement that customers may only cancel service in writing, rather than verbally, violates the choice tariffs, especially since such a requirement was not included in Universal's contracts

Staff identified 1,800 cases of allegedly improper re-enrollment switches by Universal -- instances where customers who switched away from Universal were switched back to Universal without notice or new verifications.

"In Staff's view it is clear that all enrollments, new or reenrollments, must be provided all the protections embodied in the tariffs," including new verification and confirmation of any enrollment.