Energy Choice Matters
August 22, 2008

Pa. PUC Adopts Hess' Suggestions on Best Practices in Accepting UGI's Acquisition of PPL Gas

The Pennsylvania PUC adopted a settlement permitting the acquisition of PPL Gas by UGI Utilities, but not before refining provisions meant to answer competitive concerns raised by Hess in the proceeding (A-2008-2034045).

Hess had asserted that several existing tariff provisions of UGI Utilities, UGI Penn and PPL Gas act as barriers to competition, specifically citing, "unreasonable and anti-competitive balancing rules," such as daily balancing. While UGI technically permits imbalance trading, Hess reported trading is difficult to accomplish and is costly because of numerous meter reading cycles.

Although the joint applicants offered a stakeholder process to examine best practices on retail choice, Hess had claimed the provision lacked detail and thus did not answer competitive concerns.

The PUC agreed, and ordered a timeline to be imposed on the best practices stakeholder review. The best practices review is to be initiated within nine months of the closing of the transaction, and is to specifically include competitive natural gas suppliers. The review is also to specifically review the tariff provisions cited by Hess in the case, such as balancing rules. A report from the working group is due within 15 months of the transaction closing.

The Commission also chided the ALJ's Recommended Decision which had dismissed Hess' concerns, failed to give weight to evidence presented by Hess, and mischaracterized Hess' position.

With a refined stakeholder review implemented, the Commission rejected Hess' broader exception that the settlement was not in the public interest.

Among other things, the settlement also maintains the current PPL Gas purchased gas cost rates.

Calif. IPPs Want Investigation Into State's Hybrid Market

The Independent Energy Producers Association requested that the California PUC institute a formal investigation to examine utility behavior under the state's hybrid market structure, a motion prompted by a "flagrant disregard" by Pacific Gas and Electric for the Commission's competitive-markets-first policy and utility-owned generation requirements in its application for expedited approval of its Tesla Generating Station.

The actual operation of the Commission's five-year old hybrid market structure has "deviated significantly" from the course the Commission originally intended, IEP claimed, with utilities now using the threat of reliability problems to justify bypassing competitive RFOs.

"Unless the Commission wants to be repeatedly maneuvered into a position where it abdicates its oversight authority over procurement whenever a threat to reliability is alleged, it must put allegations of threats to reliability to a critical test, and at some point it must be willing to say 'No' to [utility generation] proposals that are wrapped in a cloak of unsubstantiated concern about reliability," IEP said.

In particular, the Tesla application (A. 08-07-018), "confirms that PG&E is apparently intent on re-monopolizing the generation sector of the electric industry," IEP charged.

Contrary to PG&E's claims, IEP argued there is no documented immediate threat to reliability, noting that, aside from speculation by PG&E, the planning reserve margin for 2012 is within the 15-17% target. While PG&E speculates certain projects in development may not come online by the time needed, it has not substantiated such claims, IEP contended.

... Continued Page 5

Duquesne LSEs Urge Tweaks to Ensure Future Entrants Pay Legacy RPM Costs

Reliant Energy and Pepco Energy Services (PES) want FERC to clearly require new LSEs in the Duquesne Zone to sign an LSE agreement with PJM that would assess LSEs their share of legacy RPM capacity charges that load will have to pay despite Duquesne leaving PJM (ER08-1339, Matters, 8/5/08).

Both suppliers were commenting on LSE Service Agreements filed by PJM that are meant to allow PJM to collect legacy RPM capacity costs from Duquesne LSEs even though the LSEs may no longer be PJM members upon Duquesne's exit.

Although Duquesne and the Midwest ISO are to make future new LSEs in the Duquesne zone aware of legacy RPM costs, and inform them that they will be subject to signing an LSE agreement with PJM, Reliant and PES wanted stronger confirmation that new LSEs would not be permitted to escape RPM capacity costs.

Reliant suggested that FERC direct the Midwest ISO to amend its Open Access Transmission and Energy Markets Tariff to require that current and future MISO Market Participants serving load in the Duquesne Zone be required to enter into an LSE Service Agreement with PJM.

A tariff-embedded mandate is required to, "minimize any confusion or controversy, as well as to ensure a level playing field among retail suppliers and the fair allocation of Local Reliability Charges among LSEs competing to serve retail load in the Duquesne Zone," Reliant said.

PES also recommended that FERC ensure that all the LSE agreements, aside from unique provisions in the Duquesne agreement due to its nature as the POLR, are identical to prevent discrimination.

The Duquesne Industrial Intervenors urged that an agreement between the Midwest ISO and PJM on portable capacity should clearly address LSEs' ability to re-market their RPM-procured capacity.

While under PJM's market rules RPM costs are allocated among LSEs in a manner that reflects end-use customer switching among LSEs, the allocation of re-marketed capacity revenues is not clear, industrials noted.

"To ensure the Commission's goal of using these revenues as offsets to LSEs' capacity costs, the Commission should direct PJM, MISO and interested stakeholders to develop corresponding protocols for allocating revenues in a manner that accounts for customer switching in the Duquesne Zone and ensures that the customers who pay for RPM capacity receive the revenues generated by re-marketing that capacity," the industrials said.

DPUC Declines to Implement Latest Dominion Retail Proposal on Procurement Disclosure

The Connecticut DPUC declined to release the specific percentage of load attributable to an RFP two weeks after the procurement, but will still accelerate the release of default service retail rates to 45 days before they take effect, in a final decision on procurement disclosure (06-01-08RE02, Matters, 8/14/08).

Originally, competitive suppliers had asked that prices from the RFP be released two weeks after procurement, so that retailers could develop competing offers and customers would have enough time to switch before new default service rates took effect. In a draft, the Department rejected that proposal, citing customer confusion arising from releasing weighted average wholesale prices from the auctions, since they will differ from class specific retail rates.

As an alternative, Dominion Retail suggested disclosure of the specific percentage of load attributable to the recent RFP. Such disclosure would allow retail suppliers to make an assessment based on current market conditions of what the weighted average prices were, which would facilitate faster development of pricing alternatives for incumbent customers, Dominion said.

While the DPUC agreed such a policy would not create customer confusion, its still declined to implement Dominion's proposal in its final order.

The Department is, "concerned that the proposal might promote a weaker form of competition that does not serve the public interest. That is, the proposal could enable electric suppliers to base offerings on the expected composition of Standard Service, rather than best value for customers available in the marketplace."

The DPUC also noted that since the proposal was introduced in written exceptions, it had not been fully vetted.

The following information will be released two weeks after each RFP: 1) the cumulative percentage of load that has been awarded for each service term covered under the most recent RFP, and 2) upon award of 100% of the load for a given service term, the names of all suppliers for that service term.

PJM Clarifies It Only Offers Balancing Service to Members

To the extent Duquesne Light and the Midwest ISO expect that balancing responsibility for Duquesne loads might automatically "revert" to PJM at any time after PJM has ceased to be the RTO for the Duquesne transmission facilities, PJM disagreed in a filing at FERC (ER08-1235)

Duquesne and MISO had reported in a filing that MISO is to assume balancing services for Duquesne Zone loads, but noted the slight possibility that MISO's Ancillary Services Market could be suspended temporarily under certain circumstances. In such circumstances, Duquesne and MISO suggested that balancing responsibility would revert to other parties: "either PJM, Duquesne, or their designees."

PJM told FERC that this matter was raised for the first time in MISO and Duquesne's recent filing, and pointed out that PJM does not currently have any provisions or agreements in place to provide such balancing service outside its region. PJM currently only provides balancing services in connection with its role as an RTO and administrator of an energy market in the PJM region.

PJM is open to discussing with Duquesne what assistance PJM might provide in the unlikely event the reversion option is triggered, but stressed PJM's involvement in any such reversion plan remains to be negotiated.

Stakeholders Question SDG&E Proposal for Utility-Owned Solar

"Any vertically integrated monopolistic ownership of the solar PV systems ... is extremely detrimental to the commercial market for PV in California," Californians for Renewable Energy argued in protesting a proposal from San Diego Gas & Electric to develop up to 52 MW (dc) of utility-owned solar generation at a cost of $250 million (A. 08-07-017).

SDG&E wants to build small-scale solar installations to bridge the gap between solar installations under 1 MW promoted by the California Solar Initiative, and larger installations attracted by the RPS (Matters, 7/16/08).

However, the Independent Energy Producers Association argued that the application showed a flaw in policies, rather than a need for utility owned generation. Specifically, IEP pointed to RPS rules which cap costs of projects to a "reasonable" level based on lagging reference costs to construct a conventional combined cycle plant, which frustrate smaller scale solar development.

IEP noted that costs under SDG&E's Solar Energy Program range from 62¢/kWh to almost 94¢/kWh in 2009 and from 51¢/kWh to about 76¢/kWh in 2013, depending on which sets of SDG&E's figures are used. Those costs are four to seven times higher than what is available to other market participants subject to the RPS, IEP explained.

IEP urged the PUC to require SDG&E to conduct a competitive RFO to obtain the desired 52 MW of solar.

The Division of Ratepayer Advocates asked whether SDG&E's proposal was superior to other methods of promoting small scale solar, such as a feed-in tariff or raising the California Solar Initiative size cap (the latter of which would require legislation).

Briefly:

FERC Has Been Probing NYISO Circuitous Flows, Congestion Since May

FERC's Office of Enforcement has been investigating since May, on a non-public basis, the scheduling of power flows over circuitous paths in New York that eventually led the New York ISO to make immediate tariff changes in July (Matters, 7/31/08). Yesterday FERC accepted the NYISO's revised tariff sheets meant to limit congestion uplifts caused by circuitous scheduling around Lake Erie, with the changes precluding the scheduling of flows over eight different transmission paths for which there are more direct routing options (ER08-1281). The tariff sheets are to expire November 18 as NYISO develops a more permanent solution.

FERC Starts Paper Hearing for RSG Charges

FERC yesterday ordered the start of a paper hearing to determine the justness and reasonableness of Revenue Sufficiency Guarantee cost allocation in the Midwest ISO (EL07-86 et. al., Matters, 8/19/08). Briefs by the Complainants are due Sept. 22 with replies due Oct. 20. While the Commission will permit parties to discuss the market impacts of any cost allocation in briefs, FERC stressed that the basis of a just and reasonable cost allocation is cost causation. FERC declined to act on MISO's "indicative" tariff revisions to implement an alternative mechanism for allocating RSG charges since the proposal is inconsistent with the current procedural posture of the complaint proceeding. The Commission explained that it can only rule on complaints on the basis of submissions made by the Complainants in which they undertake to meet statutory burdens, and MISO's filing cannot form the basis of an alternate method since MISO is not a complainant in the case.

Md. PSC Sets Session for Retail Natural Gas Rules

The Maryland PSC set for October 14 a rulemaking session on RM35, relating to natural gas customer protections and the supplier-utility billing relationship, including POR and payment proration (Matters, 8/14/08). The Commission set a Sept. 22 deadline for comments on the proposed rules. The PSC is also holding a conference on Sept. 23 to review LDCs' and gas suppliers' winter readiness, including a review of preparations made by LDCs to increase customer awareness of upcoming market conditions and prices (PC17). To the extent competitive conditions allow, the Commission welcomed information from suppliers.

PUCT Staff Proposes Rules to Implement Industrial RPS Opt-Out

The PUCT Staff has submitted a proposal for publication to implement the ability of transmission-level voltage customers to opt-out of renewable energy requirements (35628). Under the rules, retail suppliers shall not collect the costs attributable to the REC program for customers opting out of the renewable requirements. Customers could opt-out for a period of up to two years before being required to submit another opt-out notice to the PUCT. The proposal asks whether the Commission should allow industrials who submitted opt-out notices in 2007 to opt-out of the 2008 compliance year even though the rule was not in effect at the time, or if the rule does not take effect before the end of 2008. Comments would be due 21 days after publication of the proposal.

D.C. PSC Sets More Hearings for Pepco Decoupling

The District of Columbia PSC yesterday determined that District law does not preclude the Commission from adopting Pepco's Bill Stabilization Adjustment (BSA), a form of decoupling (FC 1053). While concluding the BSA was a "rate" which could be implemented, the Commission ordered further evidentiary proceedings due to an incomplete record. One lingering question is whether the BSA would operate as a disincentive for Pepco to restore power following major storms, and whether Pepco's proposal to address such a concern is viable. While decoupling cases typically have little impact on retail competition, Pepco earns a profit on its SOS generation sales, which the Office of People's Counsel argued conflicts with the intent of the BSA to remove disincentives for energy efficiency. The relationship of SOS sales to the BSA will likely be a part of the case going forward. Parties were directed to develop a list of issues and procedural schedule.

Pa. PUC to Hold Hearing on Energy Prices

The Pennsylvania PUC will hold a public hearing on Sept. 11 to increase consumer awareness on rising energy prices, explore ways to reduce energy usage and discuss potential policies and strategies, consistent with the Commission's Prepare Now campaign, to help consumers prepare for higher prices. The five Commissioners will conduct the en banc hearing to solicit comments from interested parties, including the PUC Consumer Advisory Council, consumer advocates, other government agencies and utilities. Additionally, the PUC gave final approval to consumer education plans for Duquesne Light and the three FirstEnergy utilities. The plans are meant to make customers aware of rising prices (due to the end of rate caps at some of the utilities), and publicize energy conservation, low-income programs and electric choice.

Commerce Energy Receives Bridge Financing

Commerce Energy closed on "bridge" financing of up to $22.1 million in convertible subordinated short-term debt from AP Finance, LLP, an affiliate of Platinum Partners. The debt is convertible at the option of the holder at any time at an initial conversion price of $3.00 per share and has a warrant to purchase 2,773,333 shares of Commerce common stock at a price of $1.15. In connection with the financing, Commerce's current lender, Wachovia, waived all existing defaults under its Loan and Security Agreement. The financing is designed to accelerate Commerce's ability to arrange a longer-term credit facility with a large commodity bank.

Luminant, PUCT Staff Ask for More Time to Settle

Luminant and PUCT Staff asked that the stay in the Commission's investigation into Luminant's 2005 bidding behavior be stayed for another 60 days to permit settlement talks (34061, Matters, 8/15/08).

ALJ backs Oncor AMS Settlement

An ALJ submitted a proposed order to implement as filed a settlement among Oncor, REPs and other parties to fully deploy advanced meters in Oncor's territory by the end of 2012 (35718, Matters, 8/12/08).

David Biegler Invests in Ambit

Ambit Energy announced that David Biegler, former Vice Chairman and COO of TXU, joined Ambit as an investor and advisor to the executive management team.

Calif. PUC Accepts REC Definition That Includes GHG Attributes

The California PUC yesterday defined a REC as including "avoided emissions" by accepting a draft decision (R. 06-02-012, Matters, 7/16/08). While including both RPS and emission attributes, RECs could not be unbundled to separately meet RPS and greenhouse gas compliance. Although a REC will include the greenhouse gas attributes of the underlying generation, the PUC's order holds that transferring a REC will not require any renewable generation with no GHG emissions to need GHG allowances. Absent that provision, renewable generators transferring their RECs would have been seen as "null" power and assigned a system-wide emissions profile, thus requiring them to procure offsets.

Pa. PUC Accepts Several Gas Commodity Rates

The Pennsylvania PUC approved an interim purchased gas cost rate (PGC) decrease of about $2.0788/Mcf for National Fuel Gas Distribution Corp. NFG will lower its gas rate from $15.66/Mcf to $13.58/Mcf, effective Sept. 1. The PUC also approved Gas Cost Rate changes for Pike County Light & Power (from $10.1715/Mcf to $10.4550/Mcf) and Valley Energy (from $7.8865/Mcf to $11.2083/Mcf).

PGE Seeking Demand Response

Portland General Electric issued an RFP for 50 MW of demand response peak capacity to be available by December 2009. The deadline is Oct. 29 (www.portlandgeneralrfp.com).

Calif. Hybrid... *from 1*

IEP, in explaining the advantages utility-owned projects have, noted that IOUs control the pace and duration of the RFO process.

"In the market conditions of the last few years, delay can lead to unacceptable cost increases, which can force an IPP to abandon a project because it is unable to lock down prices or obtain financing commitments until the Commission approves the PPA," IEP observed.

"By slowing the pace of an RFO, an IOU can 'starve' a viable project until it is forced either to terminate the contract (at which time the utility can invoke the extraordinary circumstances exception based on reliability needs) or to sell the project to the IOU at a loss (at which time the utility will take advantage of the 'extraordinary circumstances' exception based on a unique, fleeting opportunity)," IEP added.

IEP is also worried that the RFO process, in which IPPs disclose commercially sensitive data, could be used to "mine" data for future utility projects or to block potential projects of competitors.

IEP also urged that the IOUs' RPS procurement process be reviewed, since solicitations to date have produced a lot of contracts, but few actual operating facilities.