

# Energy Choice Matters

September 1, 2008

## NRG Favors Use of Bilateral Contracts in Conn. Procurement

While the New England wholesale markets are effective at pricing short-term products like energy and ancillary services, "current regulatory uncertainty and insufficient market-based revenues from capacity markets inhibit long-term investment," NRG Energy told the Connecticut DPUC in supporting the use bilateral and long-term generation contracts as part of the state's Integrated Resource Plan (08-07-01).

The Connecticut Energy Advisory Board (CEAB) has submitted for Department review a draft IRP that supports bilateral contracting as a means to stabilize or reduce standard service rates, and that also recommended consideration of combining bilateral energy and REC contracting (Matters, 8/4/08).

NRG favored the use of bilaterals, and stressed that they should be used to help build new generation and also maintain existing generation that may otherwise retire due to environmental costs, at least until the wholesale markets achieve sufficient stability to sustain merchant investment.

But the decision to make long-term commitments should be reserved for meeting only clearly identified and impending reliability needs that are not otherwise being met through market responses, Constellation Energy and the Retail Energy Supply Association countered.

Attempting to "beat" the prevailing markets through long-term contracts for energy, capacity or RECs is fraught with risks and not supported by the analysis in the draft plan submitted by the CEAB, Constellation and RESA argued.

... Continued Page 4

## Wind Developers File Complaint Against Otter Tail, Minnkota

Renewable Energy Systems Americas (RES) and Peak Wind Development filed a section 206 complaint against Otter Tail Power Company and Minnkota Power Cooperative at FERC, alleging that the two transmission owners, "used their transmission market power to deny access to the interstate transmission grid and thereby squelch the competition or ... attempt to extort energy sales at below market prices."

Peak Wind and RES Americas are jointly developing the 400-MW Glacier Ridge wind project in eastern North Dakota. According the complainants, Otter Tail and FPL Energy are developing, adjacent to the Glacier Ridge project, a 358-MW wind project under which Otter Tail will own 98 MW and FPL Energy will own 260 MW, of which it will sell 200 MW to Minnkota and retain 60 MW for sale to the Midwest ISO market.

Otter Tail and Minnkota are also building the Pillsbury Line, a 60-mile 230 kV transmission line that, according to Peak and RES, "was not regionally planned as required by Order No. 890, but rather secretly conceived to facilitate the interconnection and transmission of energy from an 'out-of-queue' wind generation project being developed by Otter Tail and FPL Energy."

The Pillsbury Line amounts to, "a scheme to 'jump over' the pre-existing, Glacier Ridge generation interconnection request," connecting 60 miles downstream, RES and Peak alleged.

"Otter Tail and Minnkota knew that PEAK Wind and RES Americas were developing the Glacier Ridge project and intentionally designed the Pillsbury Line to accommodate their joint project with the effect to exclude Glacier Ridge and charted a circuitous route for the transmission line that would circumvent the Glacier Ridge project," the complainants alleged.

... Continued Page 5

## **SWEPCO Opposes Cost Cap in Turk Order**

SWEPCO has filed for rehearing of the PUCT's order conditionally granting the utility a CCN for its coal-fired Turk Plant, arguing that caps on capital construction and carbon costs are not appropriate in a CCN case, and cannot bind a future Commission with respect to determining prudently incurred costs (33891).

The Commission's order contained a \$1.5 billion capital construction cost cap, and limited Texas ratepayers' carbon mitigation exposure to \$28/ton of carbon dioxide (Matters, 8/13/08).

The CCN, "calls for SWEPCO's shareholders to assume the financial risk that costs may exceed the caps irrespective of whether those costs were prudently incurred," SWEPCO argued.

Unilateral imposition of a prospective cost cap is "unprecedented" in a CCN proceeding, SWEPCO maintained, and is beyond the Commission's authority, SWEPCO added.

The cost cap ignores PURA provisions that allow a utility a reasonable opportunity to earn a reasonable return on its invested capital over and above its reasonable and necessary operating costs, SWEPCO said.

"To the extent that the limitations prohibit SWEPCO from recovering its prudent and reasonable costs incurred in fulfilling its statutory obligations, the limitation will be a taking of SWEPCO's private property for public use without just compensation in violation of the Fifth Amendment to the U.S. Constitution," SWEPCO claimed.

## **FERC Proposes Revision to Affiliate Definition Under Market-Based Rate Regulations**

FERC proposed a revised definition of "affiliate" under its market-based rate regulations (Order No. 697-A) in response to requests for rehearing, and asked for stakeholder comments on the new language.

Several power marketers had argued that FERC's order placed a greater burden on Exempt Wholesale Generators (EWGs).

The Commission, in a notice issued Friday, agreed that a reasonable interpretation of Federal Power Act section 214 does not require

the Commission to use a 5% threshold affiliate test for EWGs for all purposes under Part II of the FPA. FERC also believes that using the same definition for EWGs as for non-EWGs is appropriate.

Specifically, the revised definition of affiliate in § 35.36(a)(9) would provide that an affiliate of a specified company means:

(a) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company;

(b) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(c) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and

(d) Any person that is under common control with the specified company.

For purposes of paragraph (a)(9)(i), owning, controlling or holding with power to vote less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

## **CAISO Shooting for Standard Capacity Product By Spring 2009**

The California ISO hopes to have tariff language for a Standard Resource Adequacy Capacity Product approved by FERC in time for the spring of 2009, when most market participants intend to negotiate capacity arrangements for 2010, it reported in a white paper on a standard capacity product.

Under the CAISO's timeline, it intends to publish a straw proposal in the middle of October, followed by a final proposal issued for stakeholder comment in late November. The CAISO board would consider the proposal at its January 2009 meeting, for a February filing at FERC.

Market participants have identified the need

to develop a standardized capacity product to facilitate the selling, buying and trading of capacity to meet Resource Adequacy requirements, informing CAISO that their ability to efficiently transact Resource Adequacy contracts is hindered by the current method of negotiating agreements between parties without a standard product definition for trade.

The CAISO's white paper is meant to begin the stakeholder process on developing tariff language for a standard capacity product, but does not attempt to provide any CAISO proposal or recommendation. CAISO is holding a conference call Sept. 3 on the paper, and requested comments on questions raised in the paper by Sept. 10.

CAISO noted that while fulfillment of Resource Adequacy obligations is important each hour and each day year-round, it is desirable to develop a performance metric that captures the concept that there are certain hours where capacity is especially crucial.

Any performance metric should accordingly track how well Resource Adequacy resources perform when the CAISO really needs those resources. The CAISO believes that it is important that availability during peak load periods be considered in tracking availability, and suggested that any availability metric that is chosen needs to incorporate that concept.

The CAISO is also considering the use of financial penalties on Resource Adequacy capacity within the delivery period for insufficient performance within the same period (e.g., penalties charged by the CAISO through the regular settlement statement process).

## **CAISO to Delay Load Migration Adjustments Until After CRR Allocation**

The California ISO is to seek a waiver from FERC to allow load migration adjustments impacting Congestion Revenue Rights to be conducted after the annual 2009 CRR allocation process, rather than before as the CAISO tariff currently requires (Matters, 7/29/08).

CAISO reported that it has encountered significant complications with the monthly load migration methodology when it is applied to the 27 month time period from April 2006 to the present. The ISO needs more time to acquire

data from distribution utilities with finer temporal granularity so that customer transfers can be defined by smaller time periods rather than one 27-month period -- a process which may take weeks.

While the magnitude of load migration over the last 27 months is small compared to the total number of customers served by all LSEs within the CAISO's Balancing Authority Area, the CAISO noted there are impacts due to any delay in accounting for load migration in the 2009 annual allocation. Only about twelve LSEs involved in the CRR allocation are subject to migration, CAISO said, and only 0.08% of all the customers served by all LSEs in the three IOU territories migrated during the last 27 months.

## **Briefly:**

### **NYMEX Issues Force Majeure**

NYMEX declared a force majeure for delivery obligations under its August and September natural gas futures due to the closure of Henry Hub facilities.

### **WMS Recommends Offer Floor for Responsive Reserves in Nodal Market**

The Demand Side Working Group on behalf of the Wholesale Market Subcommittee has submitted Nodal Protocol Revision Request 150 to establish an offer floor of \$0 for Responsive Reserve (RRS) service in the Nodal Market, mirroring a current provision in the zonal market. Preventing large negative bids reduces credit exposure or liability for QSEs, DSWG said. While WMS and DSWG have discussed alternative long-term measures to negate credit risk, none of the alternative measures under discussion are considered possible to be ready by the start of the nodal market.

### **PUCT OKs First Choice Settlement on Auto Renewals**

The PUCT approved a settlement under which First Choice Power will pay \$500,000 to resolve the REP's automatic renewal of customers for periods longer than 31 days if those customers did not respond to a renewal notice, in contravention of the substantive rules (35947, Matters, 8/4/08).

## **NYISO to Dynamically Allocate Ramp Capacity at Chateaugay**

The New York ISO plans to deploy software on Sept. 9 that will permit it to dynamically allocate ramp capacity between the Chateaugay Import/Export Proxy Generator Bus and the Chateaugay Wheels Through Proxy Generator Bus based on the economics of bids and offers at the two Proxy Generator Buses, it reported to FERC (ER07-669). The Chateaugay Interface is a tie with the Hydro Quebec Control Area. NYISO will not immediately implement a dynamic ramp solution. Rather, the NYISO will gradually relax the ramp constraints that apply at its Import/Export and Wheels Through Proxy Generator Buses while it concurrently tightens the new, dynamic ramp constraint. Eventually, only the dynamic ramp constraint (which applies to both Proxy Generator Buses) will be used to solve ramp constraints at Chateaugay.

## **FERC Approves Imbalance Revisions at PGE**

FERC accepted unopposed revisions to Portland General Electric's Energy Imbalance Services under its OATT meant to deter inaccurate scheduling when the Mid-Columbia (Mid-C) Price is negative (such as due to surplus hydro), and transmission customers otherwise could economically benefit from submitting inaccurate schedules. The modifications provide for a less favorable rate when energy imbalance deviations are outside of established imbalance thresholds (ER08-1183).

## **FERC OKs Enron-Seattle Settlement**

FERC conditionally approved an uncontested settlement between the Enron Parties and the City of Seattle relating to certain market-based rate revocation proceedings at the Commission (EL03-77).

## **TURN Urges Schwarzenegger to Warn Customers of Higher Winter Prices**

TURN urged the California PUC to request that Gov. Arnold Schwarzenegger warn Californians of the impending high costs for heating and lighting their homes this winter, and that now is the time to take advantage of utility programs by getting an energy audit and making energy efficiency investments. TURN cited the effort of several New England governors warning customers of higher winter prices, and noted

Schwarzenegger is uniquely positioned to call upon Californians to seize the opportunity to prepare for winter utility bills, and that the Commission uniquely positioned to request this of him. TURN made the request in Pacific Gas & Electric's application for increased electric procurement costs effective Jan. 1, 2009.

## **Conn. IRP ... from 1**

Moreover, such long-term contracting would threaten the continued development of the state's retail electric market, RESA and Constellation said.

Constellation and RESA criticized CEAB's plan for not recognizing the limits the DPUC has imposed on bilateral contracts (such as a 20% of load cap), and for not addressing stranded cost risks inherent in bilateral contracting, but avoided under the current full requirements procurement approach.

Given that the DPUC's decisions on bilaterals, including the prohibition of bundling long-term energy and REC procurement, were developed as part of a thorough investigation and record, the Department's policy should not be disturbed simply through approval of an IRP, RESA and Constellation argued.

CEAB's recommendations to expand the portfolio of assets held by utilities ignore the "tremendous erosion" in the utilities' market share of commodity service, RESA and Constellation noted. With some 80% of large C&I load and 40% of medium C&I load shopping, the Department should require utilities to prepare for the further migration of customers to competitive supply, Constellation and RESA recommended.

Environment Northeast supported CEAB's recommendations related to renewable energy contracting, and contended that the costs for RPS compliance could fall from the current cost of over \$110/MWh to about \$80/MWh through the use of long-term contracts.

Attorney General Richard Blumenthal argued that the CEAB plan does not go far enough to clearly and comprehensively address the problems facing Connecticut's electric consumers, suggesting that the plan should recommend steps to eliminate the marginal pricing rules imposed by ISO New England, which the AG contends, "significantly raise electricity prices in Connecticut."

The IRP should also propose the establishment of a public electric authority, Blumenthal added, and should consider the potential benefits of a windfall profits "refund" on Connecticut electricity generators. Blumenthal suggested that the state should recover 50% of electric generators' profits above a 20% return and provide any amounts collected directly to consumers, which would generate roughly \$400 million per year in refunds, the AG claimed.

The DPUC will hold a hearing on the IRP Sept. 22.

## ***Wind Complaint ... from 1***

Access to the Pillsbury Line has been denied to RES and Peak's similarly situated, prior-queued generation project, the complainants claimed.

"In so doing, Otter Tail and Minnkota have conferred an undue preference on the Otter Tail/FPL Energy generation project and unduly discriminated against PEAK Wind and RES Americas. Furthermore, by jumping over the prior-queued request of PEAK Wind and RES Americas, Otter Tail and FPL Energy are, among other things, trying to gain prior access to the energy markets administered by the Midwest Independent System Operator," RES and Peak alleged.

Although the interconnection requests were denied because, according to Minnkota, the line was fully subscribed before any interconnection requests were posted, such a claim, "rings hollow, since representations as to the capacity of the line have changed over time and, to this day, has still not been clearly established," RES and Peak told FERC.

Minnkota offered to interconnect the Glacier Ridge project and eliminate any transmission impediments, but only if Peak and RES would enter into a PPA at below market prices, complainants claimed. "Under similar circumstances, the Commission has expressed concerns that tying transmission access to sales is anticompetitive and unduly discriminatory," RES and Peak observed.

Even though Otter Tail has transferred operational control over some of its transmission facilities to the Midwest ISO, Otter Tail maintains transmission market power because of its preferential relationship with Minnkota, RES and

Peak alleged. According to complainants, the Otter Tail and Minnkota transmission systems are highly integrated, and their relationships are governed by five grandfathered agreements (GFAs) entered into before the formation of the Midwest ISO.

"As a result, Otter Tail (which is also a member of Minnkota) is able to develop generation facilities attached to the Minnkota system and utilize its transmission rights on Minnkota and thereby bypass the Midwest ISO's generation interconnection process and the prior-queued Glacier Ridge project," RES and Peak alleged.

RES and Peak further claimed that the Mid-Continent Area Power Pool, which reviewed the system impact study to interconnect the Otter Tail/FPL Energy generation project, recognized that energy from the generation project would overload existing transmission lines within the Midwest ISO and could threaten reliability, but has refused to require Otter Tail and FPL Energy to assume cost responsibility for the necessary physical upgrades within the Midwest ISO, "which in turn will increase transmission costs for Complainants' wind generation project."

To remedy the alleged undue discrimination, complainants asked FERC to require that their generation project be interconnected to the Pillsbury Line. Additionally, the Commission should rescind or limit the GFAs and preferential transmission rights, and revoke standards of conduct waivers previously issued to Otter Tail and Minnkota, which would require Otter Tail to separate its merchant and transmission operations and compel Minnkota to utilize an OASIS, RES and Peak urged.