

Energy Choice Matters

September 3, 2008

New York Generators Rebut LSEs Over Rest of State Capacity Under-procurements

There is no ambiguity that FERC extended to Rest of State New York generators the potential to collect refunds from LSEs for under-procuring capacity in 2002, Reliant Energy, Dynegy, and NRG Energy (New York Suppliers) said in an answer rebutting LSEs' rehearing and clarification request (EL05-17, Matters, 8/18/08).

A federal court, acting on an appeal from KeySpan-Ravenswood, had found that the New York ISO violated the filed rate doctrine by using different methodologies to set unforced capacity (UCAP) as it relates to capacity obligations, which effectively reduced the amount of capacity LSEs were required to purchase and correspondingly reduced the amount of capacity sold by generators both statewide and in-City (Matters, 7/21/08).

FERC, in its recent order on remand, made an "explicit determination" that at least two other generators may be entitled to refunds, generators pointed out. Dynegy is "unquestionably" one of those two referenced generators, and, "as the Commission obviously knew when it issued the July 18 Order, Dynegy's claims were directed exclusively to the ROS capacity market," the generators argued.

FERC has already dismissed LSEs' claims that Rest of State generators slept on their rights, as generators noted that when an RTO fails to comply with a filed rate, the Commission does not grant relief solely to the entity that brought the violation to the Commission's attention.

"To be sure, the New York Suppliers do not expect load-serving entities to be happy about having potential refund exposure. But that hardly constitutes prejudice," generators said.

FERC Denies Rehearing on Dispute Over Key Sempra-DWR Contract

FERC denied a rehearing request from Sempra Generation regarding a contractual dispute with the California Department of Water Resources, in which the Commission originally concluded that it does not have exclusive jurisdiction over the dispute, and would not expect to assert primary jurisdiction if presented with the dispute (EL07-103).

The contract, and the parties' dispute, has been cited as one of the larger barriers to complete novation or assignment of all DWR power supply contracts, which is being debated as a means to facilitate the re-opening of direct access in California (Matters, 6/11/08).

DWR had brought arbitration claims against Sempra alleging failure to perform under the supply contract, and an order from the American Arbitration Association concluded that FERC held exclusive jurisdiction, because the arbitration panel determined there was a conflict between DWR's claims and the California ISO tariff.

DWR subsequently filed for a declaratory order at FERC, at which time FERC determined it did not have exclusive jurisdiction.

Sempra argued in its rehearing request that FERC erred in holding that it did not have exclusive jurisdiction since DWR asserted that Sempra breached the contract by allegedly gaming and manipulating the intra-zonal congestion management system administered by the California ISO. Any legal determination concerning any potential breach of contract claim could only be made by the Commission acting under its exclusive jurisdiction to address manipulation of wholesale power markets, Sempra contended.

But FERC noted DWR had not specifically sought a ruling from the Commission on gaming and

... **Continued Page 6**

Conn. EDCs File Last Resort Rates

Connecticut Light and Power and United Illuminating filed with the DPUC Last Resort Service Rates for the final quarter of the year.

Generation Services Charges

CL&P LRS

Rate 21, 39, 41, 55, 56, 57, 58	
October 2008	\$0.12135/kWh
November 2008	\$0.11398/kWh
December 2008	\$0.12826/kWh

- Rates 41, 55, 56, 57, 58 have identical on-peak and off-peak charges.
- CL&P GSC's include the deduction of a 0.053¢/kWh credit due to prior over-recovery

UI LRS

October 2008	\$0.110806/kWh
November 2008	\$0.110659/kWh
December 2008	\$0.121398/kWh

- No peak/off peak differentiation

Calpine Opposes Industrials' MCPE Adjustment as Move Away from Competitive Outcomes

Calpine recommended rejection of PRR 776, Automatic MCPE Adjustment During Intervals of Non-Spinning Reserve Service (NSRS) Deployment, since the PRR's arbitrary price setting represents a move away from competitive measures (Matters, 8/26/08).

Industrials had proposed a \$100/MWh upward MCPE adjustment when the deployment of NSRS occurs in order to provide accurate prices in Real-Time and facilitate load response.

While Calpine appreciates the difficulty in loads being fully responsive to price during deployments of NSRS, the IPP questioned the use of arbitrary price setting measures that may look appropriate on average, but may fall very short of the real-time operating costs of other resources.

"Market pricing fundamentals aren't tied to averages, and although averages might be considered fair for loads, based on actual seasonal conditions, they may represent under recovery of generator costs," Calpine said.

Calpine noted that there are "numerous questions" in regard to what will be done with the price adjustment when \$100 doesn't adequately represent true scarcity pricing levels that might result from ex post administration of PRR 650, Balancing Energy Price Adjustment Due to Non-Spinning Reserve Service Energy Deployment.

CAISO Defends Neutrality of Grid Reform Proposal

The fact that some under-capitalized generation projects may find interconnection more difficult under the California ISO's Generator Interconnection Process Reform (GIPR) proposal does not mean the proposal unlawfully discriminates against non-utility generation, CAISO argued in rebutting claims from IPPs (ER08-1317, Matters, 8/19/08).

LS Power Associates, Tenaska and others had contended that stricter deposit and credit requirements would be unduly burdensome to merchant developers since many IPPs use off-balance sheet financing, while utility-affiliated generators can finance projects based on the balance sheets of their regulated parents.

While CAISO did not deny some merchant projects may use off-balance sheet financing, the ISO, "does not agree with the assumption underlying this argument - that all non-utility generators are, by definition, under-capitalized and therefore unduly disadvantaged as a class. It is the CAISO's experience that quite the opposite is true in many cases."

It is true that the GIPR proposal will make it more difficult for underfunded projects to enter the interconnection process, but CAISO insisted such a result is not unreasonable.

"To the contrary, it has been a stated policy goal of the CAISO throughout this process that the interconnection process must no longer be bogged down studying projects that are unlikely to reach commercial operation," CAISO reminded.

Non-utility projects that are appropriately capitalized will derive particular benefit from the increased efficiencies of the GIPR process, insofar as they will have earlier assurances as to their cost responsibilities as well as greater certainty as to their Commercial Operation Date, CAISO maintained.

Northern California Power Agency Attacks Large Western Crisis Settlement

The Northern California Power Agency opposed a wide-ranging settlement regarding distribution of funds from various Western electricity crisis settlements, arguing that the settlement improperly pre-empts non-settling parties' rights and inappropriately awards the bulk of funds to the California IOUs.

Although styled as resolving the so-called "Phase II" or "Distribution" phase of the Gaming and Partnership Proceedings initiated by FERC (EL03-152-002 et. al.), NCPA concluded that the settlement would also impact so-called global refund cases, and allocate funds previously reserved for non-settling parties in the so-called "global settlements."

All non-settling parties would be excluded from sharing in any of the currently held and expected future settlement funds, NCPA said. And unlike in other Commission-approved settlements relating to the Western market dysfunction, no provision is made to set aside any funds for non-settling parties, NCPA added.

The black-box settlement nowhere addresses, let alone attempts to explain, the basis for its allocation, NCPA reported.

"The net effect of this proposed settlement is to pay -- out of money heretofore reserved for others in the refund dockets -- one set of parties who will use the extra money to support their effort to continue to attack another set of the parties (including NCPA and other 201(f) entities) and the Commission itself, and NCPA does not view that as a viable solution."

NCPA was referring to proceedings initiated by the California Parties (CAP) against NCPA alleging various tariff violations, (with NCPA accusing Pacific Gas and Electric and Southern California Edison as the leading parties). NCPA opined that the alleged violations were undertaken to respond to demand-supply imbalances and to help the IOUs, but now it is being punished for such efforts.

NCPA wryly noted that, "the IOU members of CAP have been found to have manipulated the markets. Apparently acting on the theory that the best defense is a strong offense, however, CAP have driven this process to the point where they now allocate themselves at least 72.98% of

the proceeds of the partnership/gaming settlements." NCPA was referring to a Commission determination that the IOUs had violated Market Monitoring and Information Protocol by underscheduling in the day-ahead market in an attempt to lower prices and buy power at capped real-time market prices.

NCPA also objected to the settlement's formula which pays parties based on net spot market purchases, noting that the recent *Morgan Stanley* decision affirmed that other markets, such as the market for long-term bilaterals, were also affected by the Western dysfunction.

While NCPA is not seeking to unwind such contracts because a contract agreed upon binds both parties, for good or for ill, the agency did suggest that amounts collected in the disgorgement proceedings should be used to somewhat recompense entities such as NCPA who were injured as a result of purchases in non-organized markets where the price was clearly affected by the dysfunctional spot markets.

Ratepayer Advocates Savage PG&E Smart Meter Upgrade

"[T]here are strong indications that PG&E's first AMI deployment is indeed in serious trouble," the Division of Ratepayer Advocates argued in an opening brief on Pacific Gas & Electric's application for \$572 million in upgrades to its SmartMeter project (A. 07-12-009).

Included in the AMI upgrade is a home area network gateway device meant to serve as a "bridge between PG&E's network and the customer's home area network," and enable real-time price signals.

But DRA told the PUC to be "very circumspect" in reviewing PG&E's update since PG&E has already spent one-third of its initial \$1.7 billion AMI authorization, but has only activated 2% of electric meters, DRA said.

"PG&E has exhausted \$70 million of its \$88 million Program Management budget when the project is barely off the ground and already in need of change," DRA added.

"PG&E's information technology (IT) budget is already 33% over budget. But that should come as no surprise since history shows that PG&E has repeatedly failed in the area of IT," DRA charged.

The PUC, "needs to send a message to all

utilities that although the sky is the limit in terms of [AMI] possibilities, the reality is that ratepayers today can ill afford to spend their hard earned money fixing problems that they did not cause," DRA urged.

"DRA would like the Commission to apply some procedural restraint on what PG&E apparently perceives to be a runaway AMI gravy train," the advocate opined.

DRA also objected to PG&E's application on procedural grounds, warning that a simple update to the original plan, "could lead to a perpetual revolving door through which [PG&E] will pass every two to three years to ask for yet another few hundred million ratepayer dollars because there is, for example, a new IT toy on the market."

DRA blamed much of the problems on PG&E's poor selection of technology in its original application, including use of induction electro-mechanical meters instead of solid state meters.

TURN dismissed the claimed demand response benefits from home area networks, since the same results could be obtained with cheaper, less risky air conditioning cycling switches, TURN argued.

Pepco Utilities File Incremental SOS Cost Reports

Pepco and Delmarva proposed a negative administrative credit to recover undercollections from customers in the defunct Type III SOS class in reports to the Maryland PSC on incremental costs of SOS.

For the 2007-08 SOS year, Pepco overcollected \$364,000 from Type I customers, \$2.0 million from Type II customers, and \$80,000 from Hourly Priced Service customers.

On a cumulative basis, Pepco has overcollected \$357,000 from Type I customers and \$1.2 million from Type II customers. It has undercollected \$181,000 from Hourly Priced Service customers. Pepco is to prospectively adjust the administrative credit to reconcile the undercollections.

Pepco also reported a net undercollection of \$616,000 for the now defunct Type III SOS class and proposed an administrative credit applicable to all customers previously eligible for Type III service to recover the costs. The credit would be

set a $-\$0.00014$, resulting in a charge to the customer.

For the 2007-08 SOS year, Delmarva undercollected \$80,000 from Type I customers and \$75,000 from Hourly Priced Service customers. It overcollected from Type II customers by \$197,000.

On a cumulative basis, Delmarva undercollected \$300,000 from Type I customers \$150,000 from Type II customers and \$102,000 from Hourly Priced Service customers.

Delmarva also reported a net undercollection of \$247,000 for the defunct Type III SOS class and proposed an administrative credit applicable to all customers previously eligible for Type III service to recover the costs. The credit would be set a $-\$0.00034$, resulting in a charge to the customer.

Briefly:

DPUC to Examine REC Banking

The DPUC has opened a docket to promulgate regulations for banking RECs (08-09-01). The DPUC noted that several other New England states allow banking of RECs as a method of stabilizing REC prices, but added that implementation would likely require amendments to Conn. Agencies Regs. Section 16-245a-1.

Suez Buying FirstLight

Suez Energy North America is acquiring FirstLight Power Enterprises and its 1,538 MW fleet from Energy Capital Partners. Suez reported the acquisition makes it the fifth largest generator in New England. FirstLight's 16 plants, mostly hydro with one coal unit plus a gas-fired peaker under development, in Massachusetts and Connecticut will be added to Suez's portfolio in the region, which includes six renewable and natural-gas-fired assets.

Duquesne Light Amenable to Adjusting MISO Tariff Schedules to Exclude PJM RTEP Fees Collected Through Attachment O

While Duquesne Light insisted that any PJM Regional Transmission Expansion Planning costs assigned to it upon its exit should be paid for by customers and recovered in Duquesne's Attachment O, Duquesne would not oppose a change to Schedules 7 and 8 of the Midwest ISO

Tariff to exclude PJM RTEP costs from the calculation of the Drive-Through and Drive-Out rates (ER08-1309). That's meant to answer concerns from other Transmission Owners that including RTEP costs in Attachment O would shift RTEP costs to other Midwest ISO LSEs' customers since Attachment O rates are used to derive Drive-Through and Drive-Out rates (Matters, 8/18/08).

RESA Supports Quicker Action on RM17

The Retail Energy Supply Association backed Washington Gas Energy Services' recommendation to the Maryland PSC that utilities implement various EDI-related provisions of RM17 by December 1, instead of March 1, 2009 as utilities had proposed (Matters, 8/19/08). "The amended COMAR 20.53 is important to retail suppliers who have entered, or are contemplating entering, the Maryland retail electricity market," RESA said, agreeing with WGES that utilities have not justified the lengthy implementation for changes that the utilities admit will not include significant costs. Among other things, the changes under RM17 would modify the enrollment and drop window to 12 days before a meter read (versus the current 17 and 35 days, respectively) and also would create a new EDI transaction to allow suppliers to correct errors in enrollment or drop requests electronically (Matters, 8/5/08).

DEO Posts Latest SSO Charge

Dominion East Ohio filed with PUCO an SSO rate of \$10.724/Mcf effective Sept. 16.

Calpine Hires Thad Hill

Calpine named Thad Hill, recently Executive Vice President at NRG Energy, as its Executive Vice President and Chief Commercial Officer. Hill had also served as President of NRG Texas and was previously with Texas Genco.

Reliant Energy Signs Supply, Sponsorship Deals with Bills

Reliant Energy signed multi-year marketing and energy supply agreements with the Buffalo Bills, making Reliant Energy the official electricity supplier to the NFL team and its facility, Ralph Wilson Stadium. Reliant currently markets to larger C&I customers in New York but has been evaluating entering the mass market.

SPP-Energy Integration Meeting Delayed due to Gustav

The Sept. 4 SPP stakeholder meeting regarding the potential integration of Entergy Texas into the RTO has been postponed due to Hurricane Gustav, and a new date has not been set. The meeting is another in a series regarding the possibility of SPP acting as a qualifying power region for Entergy, which is a prerequisite for retail competition.

SCE CEO Answers Spin-Off Question

Edison Mission Energy and Southern California Edison have benefited from being together, Southern California Edison CEO Alan Fohrer told investors in response to a question about a potential spin-off of either of the subsidiaries at the Lehman Brothers CEO Energy Conference. Edison Mission has particularly benefited from its parent's funding, where a stand-alone IPP might have been more challenged, Fohrer said. Noting that you can only spin-off companies once, Fohrer did say that Edison continues to look at various options to drive shareholder value. Presentations from executives at Dominion and FPL at the conference did not include any new plans or disclosures not revealed in their recent earnings reports covered in this space.

TIEC Asks for Rehearing of Turk Order

Texas Industrial Energy Consumers filed for rehearing of the PUCT's order conditionally granting SWEPCO a CCN for the Turk Plant, reiterating arguments that the plant would force retail customers to cross-subsidize wholesale customers; would harm competitive markets; is not needed due to slower load growth; and would not displace significant amounts of gas-fired generation as claimed (33891).

SERNA Sponsoring Conn. Energy Forum

Suez Energy Resources NA will be the signature sponsor for the Hartford Business Journal's Business Energy Summit, an educational forum discussing the intricacies of the retail electricity market, on Sept. 11 in Cromwell, Conn. Two Suez experts will discuss, among other topics, demand response, and renewable energy and carbon management

DWR-Sempra ... from 1

manipulation in its petition for the declaratory order, and thus found Sempra's rehearing request outside the scope of the proceeding.

Since FERC's original order made only the limited declaration that the CAISO tariff did not conflict with the contract, and that accordingly the Commission did not have exclusive jurisdiction over the contractual dispute, rehearing is not warranted, the Commission ruled.