Energy Choice Matters

September 16, 2008

PUCO Staff Says Most Rider CRT Costs Should Be Bypassable

Noting that nearly all the costs in a reconciliation rider proposed by FirstEnergy as part of its market rate offer are generation costs, PUCO Staff argued in pre-filed testimony that there is no "logical rationale" for making such charges unavoidable (Matters, 9/11/08).

FirstEnergy proposed Rider CRT to adjust the retail price of generation to account for the differences between generation revenues and costs during the prior quarter, as well as to collect (1) any competitive bidding process expenses not recovered through the tranche fees paid by suppliers; (2) a working capital adjustment to account for the lag between the supply cost occurrence and cost collection; (3) uncollectible amounts associated with the generation service; (4) delta revenues associated with any economic development schedules, energy efficiency schedules, reasonable arrangements, governmental special contracts, and unique arrangements; and (5) future costs related to alternative energy resources.

Rider CRT would be nonbypassable under FirstEnergy's proposal.

Aside from the delta revenues, "everything else in the Rider is related to the generation costs," Staff concluded. As such, there is no logical rationale which would require customers who are not taking generation service from the FirstEnergy utilities to pay the charges, and the charges should be bypassable.

Portions of the Rider related to delta revenues for special contracts should be removed and recovered in a separate Rider, developed in accordance with codes relating to Reasonable Arrangements, Staff said.

Most Calif. LSEs Oppose Limits on Use of Tradable RECs

The long delay in California PUC action on implementing a tradable REC system has already hampered the RPS compliance efforts of electric service providers, and meeting the state's existing renewable energy goals, much less more aggressive goals currently under consideration, is likely not achievable without tradable RECs, the Alliance for Retail Energy Markets and Western Power Trading Forum said in a supplemental round of comments in the ongoing tradable RECs docket (R. 06-02-012).

Any limits on the use of tradable RECs by LSEs for RPS compliance, as contemplated under a straw proposal, would undermine California's energy policy goals, AReM and WPTF argued, and would also, "almost certainly stifle efficient investment in new renewable resources throughout the West."

"The reality California faces is that a portion of the cost efficient and more easily developed renewable energy generation potential needed to achieve California's renewable energy goals is to be found in new customer installed distributed generation facilities and adjacent states. The current inability of LSEs to avail themselves of TRECs is preventing in-state, on-site renewable generation from selling into the RPS-compliance market, taking away a significant source of non-transmission dependent renewables and undermining DG programs and projects that California energy policy represents," AReM and WPTF explained.

With the potential increase in the RPS to 33%, tradable RECs become even more important given political and environmental obstacles to siting transmission projects to access bundled renewable energy.

... Continued Page 5

IPPs' Motion to Dismiss Tesla Application, Start Investigation Denied

California PUC President Michael Peevey denied motions to dismiss Pacific Gas and Electric's application to build the Tesla generation station, and related motions for an investigation of utility procurement, in an assigned Commissioner's ruling (A. 08-07-018).

Several IPPs had urged an investigation into the state's hybrid generation market, and moved to dismiss PG&E's application, because they claimed the state's competitive-markets-first policy was being ignored (Matters, 8/22/08).

But Peevey determined that issues surrounding whether PG&E's project qualifies under limited exceptions for utility-built projects outside of competitive RFOs are factual questions that need to be determined by the Commission.

While the Tesla application does not present a resource subject to a settlement or a bankruptcy proceeding, the Commission may be persuaded that Tesla's advanced permitting status constitutes a "unique opportunity" for utility-owned generation, in light of the strong commitment articulated in D.07-12-052 to a case-by-case approach for examining proposed utility-owned projects, Peevey said.

"Thus, we conclude that the Commission may wish to clarify whether D.07-12-052 has set a policy that would limit its examination of unique circumstances to only those situations that arise from a settlement or from a bankruptcy," Peevey noted.

Whether the Tesla plant meets the reliability exceptions for utility-owned generation is also a factual question that must be addressed in the proceeding, Peevey added, as is the claim from PG&E that holding a competitive RFO for such needs is infeasible.

Peevey agreed that the Tesla proceeding is not the appropriate forum for considering a larger investigation into the procurement practices of the utilities, as urged by IPPs.

Under Peevey's scoping order, a draft decision on the Tesla application is due January 2009 with Commission consideration in February 2009.

CenterPoint, TNMP Ask REPs to Cease EDI Service Orders During Restoration

CenterPoint Energy and Texas New Mexico Power asked REPs Monday to cease submitting various EDI service orders for the Gulf Coast area, including Move-Ins, Move-Outs, and Disconnects for Non-Pay, while Hurricane Ike restoration efforts continue.

CenterPoint is returning all MVI, MVO and service orders that are currently in its systems as "unexecutable," and will not be back-dating any of the transactions. REPs may re-submit transactions at the conclusion of the Hurricane Ike Emergency Operating Plan event after receiving notification from CenterPoint Energy in a future Market Notice.

TNMP said that orders received will be held open until such time the requested service can be performed, but DNP orders will be returned as "complete unexecutable".

CenterPoint reported that as of 8 p.m. Monday, 1.56 million customers of its 2.26 million total remained without power. TNMP reported 67,000 of 115,000 customers were without power. ERCOT reported that Oncor had 58,000 customers without power as of midday, with a total of 1.7 million customers without power throughout the ERCOT market.

ERCOT also said that transmission forced outages were down to 100, with only a single 345 kV outage remaining. CenterPoint has restored all high voltage electric transmission connections between CenterPoint and the rest of the ERCOT network.

Generation outages totaled 2,585 MW, comprised of 11 plants with 30 generating units. The total includes 690 MW of utility generation and 1,895 MW of private generation (process/refinery generation), ERCOT said.

Constellation, Exelon See No Adverse Impact from Lehman Bankruptcy

Constellation Energy and Exelon separately told investors that each believed that the Lehman bankruptcy and the possible resulting effects on subsidiaries of Lehman will not have a material adverse effect on their businesses.

Constellation Energy Commodities Group is a counterparty with Lehman Brothers Commodity Services Inc. and Eagle Energy Partners I, LP (subsidiaries of Lehman), in wholesale energy marketing transactions. The obligations of Lehman Commodity Services and Eagle Energy are guaranteed by Lehman, and the Lehman bankruptcy filing gives Constellation Commodities the right to terminate the transactions. As of September 15, Constellation Commodities did not have any direct net credit exposure to Lehman Commodity Services or Eagle Energy, based on existing contracts and current market prices.

Baltimore Gas and Electric has existing contracts with Eagle Energy for the purchase of gas for the 2008 winter period based on a first of the month index price. BGE does not have any material credit exposure under the contracts and does not believe that the failure of Eagle Energy to perform under the contracts would have a material impact on its ability to meet its customers' gas requirements.

Constellation and BGE have aggregate credit facility commitments of $6.13 billion (not including a firm, underwritten commitment for an additional $2.0 billion credit facility that extends through December 2009) with a large consortium of banks, including Lehman Brothers Bank, a subsidiary of Lehman. As of September 15, Lehman Brothers Bank's total commitment within such existing credit facilities is $150 million. As of September 15, Constellation had excess liquidity of approximately $2.0 billion, excluding the existing $150 million Lehman Brothers Bank commitment and excluding the firm, underwritten commitment for an additional $2.0 billion credit facility that is expected to close in October 2008. Constellation does not believe that the potential reduction in available capacity under the credit facilities would have a significant impact on its liquidity.

Exelon Generation is a counterparty with Lehman Brothers Commodity Services Inc. in wholesale energy marketing transactions. The obligations of Lehman Brothers Commodity Services Inc. are guaranteed by Lehman, and the Lehman bankruptcy filing gives Generation the right to terminate the transaction. As of September 12, 2008, Exelon's direct net exposure to Lehman Brothers Commodity Services Inc. was estimated to be less than $30 million pre-tax.

Exelon, Generation, ComEd and PECO have aggregate credit facility commitments of $7.6 billion with a large consortium of banks, including Lehman Brothers Bank, a subsidiary of Lehman. As of September 12, Lehman Brothers Bank's total commitment within these credit facilities was $283 million. Exelon, Generation, ComEd and PECO do not believe that the potential reduction in available capacity under the credit facilities will have a significant impact on any registrant's liquidity.

LDCs, End Users Protest Proposal to End Price Reporting for Storage Providers with Market-Based Rates

LDCs and end users protested an application from SG Resources Mississippi to end Internet posting of transactional pricing information pertaining to natural gas storage with market-based rates not only for SG Resources, but for all other similarly situated interstate natural gas storage service providers authorized to charge market-based rates (RP08-606).

SG Resources Mississippi says the waiver of FERC rules for such Internet price reporting is needed to preserve the confidentiality of certain commercially sensitive storage service contractual information.

"The requirement that independent interstate gas storage operators authorized to charge market-based rates must post publicly the prices they have agreed to charge in private negotiations is fundamentally inconsistent with the Commission's goal of promoting a robustly competitive market for gas storage services that encourages new entry and expansion," SG Resources told FERC.

Without the waivers, mandatory disclosure of pricing and other sensitive contract information will continue to place interstate storage providers at a significant disadvantage in negotiating with current and prospective customers and, in particular, will disadvantage interstate storage operators relative to competitor intrastate storage operators, SG Resources said.

Such price reporting, "can act as an artificial constraint on negotiations; prospective customers having knowledge of previously negotiated prices will seek to pay no more than the lowest historic posting, without regard for current market conditions," SG Resources added.

The Internet postings are unnecessary, SG Resources argued, since customers of a storage service provider that may charge market-based rates cannot be forced to pay unreasonable rates since the Commission only grants authorization to charge market-based rates to storage providers that demonstrate that they lack market power or otherwise satisfy customer protection requirements.

But, "Public price reporting is an important check against the potential for the exercise of undue discrimination and market manipulation by those that have been granted market-based rate authority," the American Gas Association said in a protest. Price reporting, "allows customers to determine whether the prices the storage provider offers in negotiation are just and reasonable based on prices paid by other similarly situated market participants," AGA noted.

AGA pointed out that FERC, bolstered by new legislative authority, has been moving toward greater market transparency even in commodity markets where all market participants are considered to lack market power.

The Natural Gas Supply Association, the Independent Petroleum Association of America, and the Process Gas Consumers Group questioned SG Resources' arguments concerning competitive disadvantage to intrastate storage projects that are not required to post prices.

"[T]he Associations are uncertain whether these intrastate 'competitors' can even be considered to operate in the same market as interstate storage providers. Potential storage customers simply cannot obtain the same services from intrastate operators," the joint protestors said.

The Associations observed that FERC has stated that the price reports provide the opportunity to detect potential undue discrimination or preference in storage rates or services, and thus are an important consumer protection.

"Eliminating these posting requirements would essentially insulate storage operators with market-based rate authority from regulation by preventing customers and the Commission from monitoring potential changes in an operator's market-power status," joint protesters said.

Briefly:

Gexa Files for Ohio Electric License

As first reported here (Matters, 9/5/08), Gexa Energy filed an application for an Ohio retail electric supplier license, seeking authority to sell to all customer classes at the FirstEnergy utilities, and commercial, mercantile and industrial customers at AEP, Duke and Dayton. Gexa said it will manage its billing responsibilities through PPL Solutions, in addition to internal Gexa staff. Gexa reported PPL Solutions handles billing responsibilities and related customer service for approximately 5,000 Gexa Energy affiliate customer accounts in Maine, Massachusetts, Washington, D.C., Illinois, Connecticut and Maryland. Gexa anticipates a Jan. 1, 2009 start for Ohio marketing.

OCC's Request to Consolidate FirstEnergy ESP, MRO Cases Denied

A PUCO attorney examiner denied the Ohio Consumers' Counsel request to consolidate FirstEnergy's electric security plan and market rate offer applications (Matters, 9/2/08). The attorney examiner noted that the two applications are filed under different statutes which have unique timeframes for Commission action. OCC did not persuasively demonstrate how the two different timeframes can be reconciled if the cases were to be consolidated, the examiner said. OCC's motion to sever distribution rate case issues from PUCO's review of the electric security plan will be addressed by a subsequent entry in the proceeding.

Potomac Economics Finds No Problems at PNM

Market monitor Potomac Economics found no evidence of anticompetitive conduct by PNM at its Public Service Company of New Mexico utility during the second quarter of 2008, according to a new report from the market monitor. Potomac reported that instances of out-of-merit dispatch and transmission outages did not raise competitive concerns after analyzing their causes. Potomac also reported that previously observed anomalous transmission reservation requests, where a transmission reservation that was initially refused, almost immediately resubmitted, and then approved, have not been observed in 2008. The previous service requests, while prompting a closer look, were determined to have been caused by faulty data provided by transmission customers, or requests exceeding ATC, and did not relate to anticompetitive activity, Potomac said.

PPL Unit Building Solar Facility in N.J.

PPL Renewable Energy is pursuing development of a 5-MW solar power system in Warren County, N.J., which PPL says would be the first utility-scale solar project in New Jersey. PPL could expand the facility to 50 MW. The energy and RECs will be marketed by PPL EnergyPlus.

Md. IOUs Start RFPs for SOS

With approval from the PSC on RFP timelines and standard service agreements (Matters, 9/15/08), the Maryland IOUs initiated the RFP process for Type I and Type II SOS supplies, with procurements in October 2008 and April 2009. The utilities are requesting proposals totaling approximately 5,009 MW, including:

- 918 MW for AP
- 2,566 MW for BGE
- 353 MW for Delmarva
- 1,172 MW for Pepco

TRECs ... from 1

But Calpine countered that "reasonable limits" on the quantity of tradable RECs are appropriate because the, "preservation and development of in-state renewable resources is essential to meeting RPS goals."

Calpine opined that new RPS eligible generation simply cannot be financed without the existence of a long-term power purchase agreement, and that long-term RPS goals will be best served by a system that facilitates long-term contracting for in-state renewable generation.

"Given the nexus between long-term contracting and the development of new renewable generation, the primary purpose of a TREC market should be to enable efficient, short-term transfers of existing RECs among LSEs, and provide incentives for investment in existing resources and those that can be built without financing," Calpine said.

Calpine considers it unlikely that a tradable REC market would provide necessary and reliable long-term investment signals to renewable project developer and investors.

"As a result, allowing LSEs to use TRECs to meet 100% of their RPS compliance obligations could potentially discourage the development of in-state renewable resources," Calpine claimed.

However, Calpine suggested that any tradable REC usage limit should apply only to investor-owned utilities and large LSEs whose long-term business models can more easily accommodate long-term contracting.

But Southern California Edison noted some smaller LSEs may be able to meet their RPS goals solely through the purchase of short-term tradable RECs, "thereby not supporting or pursuing the construction of new incremental renewable power in California."

"Based on some compliance filings, it appears that some electric service providers ('ESPs') may be relying on TRECs despite the fact that the Commission has not authorized their use for RPS compliance in California," SCE suggested.

SCE supports the minimum quota requirement contained in the straw proposal to ensure that all LSEs support the development of new renewable resources through either long-term bundled contracts or bundled contracts with new facilities. Under the straw proposal, LSEs may count short-term tradable REC contracts for RPS compliance only if, in the same calendar year, the LSE signs long-term bundled contracts or bundled contracts with new facilities whose aggregated annual expected deliveries total at least 0.25% of its prior year's retail sales.

SCE opposed any additional limits on the use of tradable RECs, noting municipals would not be subject to PUC rules, putting Commission-jurisdictional entities at a disadvantage in competing for renewable resources.

The Independent Energy Producers Association suggested an initial limit on use of tradable RECs that would be phased out over time as market stability and liquidity improved. IEP, "wants to make certain that the REC market facilitates actual renewable operations, rather than functions as a tool to swap some unidentified product out-of-state for actual renewable production."

But San Diego Gas and Electric argued that a limit on tradable RECs would simply reduce liquidity in the tradable REC market and shift more transactions to short-term physical supply. A limit on the use of tradable RECs would effectively create two separate markets, one for bundled renewable energy and the other for tradable RECs, reducing liquidity in both, SDG&E said.

SCE noted that tradable RECs would provide LSEs with additional flexibility that will lead to lower transaction costs in obtaining renewable attributes from remotely sited generation. SCE urged the use of tradable RECs, "as soon as possible."

SCE opposed standardized terms and conditions for tradable RECs that would hamper the flexibility that tradable RECs are intended to create.

Calpine, as well as several LSEs, also opposed the straw proposal's $35/MWh cap on the total price of a tradable REC because it would distort the market's response to demand for tradable RECs and potentially impede the development of renewable energy resources.