Energy Choice Matters

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Calif. ALJs Propose Reversing Peevey Ruling, Dismissing Tesla Application

Two ALJs in a proposed decision would overturn an Assigned Commissioner's Ruling from California PUC President Michael Peevey, and dismiss Pacific Gas & Electric's application to build the Tesla generating station (A. 08-07-018, Matters, 9/16/08). The ALJs concluded PG&E failed to demonstrate that a competitive RFO was infeasible, and stated that allowing the application to proceed could damage the competitive procurement process.

IPPs and power marketers had urged the PUC to dismiss the proceeding, citing the failure of PG&E to meet the Commission's "unique opportunity" or "reliability needs" standard for utility-owned generation, and PG&E's failure to show why holding a competitive RFO for any capacity needs would be infeasible.

Peevey originally denied the motions to dismiss, finding that the issues were questions of fact, and that PG&E's application would meet the Commission's standards if PG&E could make such factual showings regarding extraordinary circumstances during hearings.

While appeals and re-examinations of Commission rulings are rare, the ALJs argued it is reasonable for the Commission to examine on its own motion whether to reverse Peevey's ruling, because PG&E has requested an interim decision granting recovery of any project termination costs that it may incur should the Commission decline to grant a CPCN for the Tesla station. Granting such a decision would place ratepayers at risk for approximately $59 million in termination costs before the issue of the reasonableness of the project came before the full Commission, the ALJs said.

In their proposed decision, the ALJs agreed with power marketers that PG&E, "fails to meet the

... Continued Page 5

Md. PSC Staff Says Not to Mix Gap RFP and Review of SOS/Integrated Resource Planning

The Maryland's PSC investigation into using RFPs to shore up any reliability gaps, "is not an integrated resource plan proceeding," and should not mix the objectives of meeting short-term capacity needs with other policies being discussed in Case 9117 (review of SOS structure), the Maryland PSC Staff said in reply comments concerning the Gap RFPs (Case 9149, Matters, 9/15/08).

"Mixing the objectives of these two proceedings is likely to short-circuit the intent of Case No. 9117 and unlikely to cost-effectively or adequately resolve the potential reliability gap," Staff said. Several stakeholders, including certain generation developers and state agencies, had pushed for long-term contracting as part of the Gap RFP process.

But finding existing assets or easily added incremental assets should be the first strategy to bridge a potential near-term gap, Staff reasoned. A potentially important resource that could be "found" to provide emergency situation reliability is behind-the-meter emergency generation that is not already participating in PJM reliability programs, Staff reported.

From 2001 to July 2008 the Commission approved 247 CPCN Exemptions for a total of approximately 638 MW of emergency generation. Behind-the-meter generators account for the bulk of that capacity. But based on PJM's data, as of August 31, 2008 only 189 MW of the Maryland load registered to participate in PJM demand response programs came from backup or emergency generators.

Staff noted that new central station generation projects carry their own risks of delay or failure due

... Continued Page 5

Constellation Defends MidAmerican Deal After EDF Makes 32% Higher Offer

Constellation Energy CEO Mayo Shattuck was put on the defensive by analysts and stockholders after French giant EDF, in concert with Kohlberg Kravis Roberts & Co. and TPG Capital, offered $35 per share ($6.2 billion) to purchase CEG, nearly $10/share above MidAmerican Energy Holdings' offer.

EDF said it would have matched the immediate $1 billion in cash provided by MidAmerican, cited by CEG as a reason for selecting MidAmerican's offer. EDF stated that CEG's board did not respond to its bid.

As CEG's second-largest shareholder, EDF, "believes that the MidAmerican transaction does not provide adequate value to shareholders," EDF said in an SEC filing.

Five shareholder lawsuits have also been filed over what was regarded as a firesale price.

Shattuck, however, called the MidAmerican marriage the "superior offer," citing the rapid deterioration of CEG's position last week and the need for quick action and liquidity.

The Berkshire Hathaway brand carries a lot of weight in the market, Shattuck said, pointing to the "fear factor" embedded in the current climate. A billion dollars from Berkshire Hathaway meant "a lot more" than alternatives, Shattuck told investors.

Shattuck also said the MidAmerican deal offered the "best opportunity" for regulatory approval. NRC rules prevent foreign ownership of nuclear plants, which is one reason EDF's bid includes KKR and TPG. Shattuck said there were no market power issues with the MidAmerican combination, and reported that CEG would ask the Maryland PSC to complete its review in six months.

MidAmerican CEO Gregory Abel told analysts that Constellation Energy will continue to operate autonomously under the agreement. The MidAmerican deal includes a $175 million breakup fee.

Md. LDCs Oppose Uniform Transactions with Suppliers

Maryland LDCs opposed efforts to standardize electronic transactions with competitive gas suppliers, citing prohibitive costs, while the Office of People's Counsel renewed its objection to both POR and prorated payments under utility consolidated billing (RM35, Matters, 9/19/08).

Both Washington Gas Light and Baltimore Gas and Electric opposed using uniform electronic transactions across the state, citing the staggered and unique development of choice programs at the various utilities.

But Pepco Energy Services, echoing a comment from several suppliers, noted the current myriad of rules that differ from LDC to LDC, and even among customer classes, act as a barrier to entry since the rules are difficult to follow and require marketers to develop several unique backoffice processes.

WGL argued customers would not see a benefit from standardized electronic transactions, while implementation would be costly. Implementing EDI would cost $500,000 to $1 million, WGL said, taking 12-18 months to complete. Annual operational costs would be $250,000. WGL noted that its market extends into Virginia and the District of Columbia, and stressed that uniformity among operational rules and procedures among its LDCs created a functional regional market open to suppliers. Maryland-specific rules would bifurcate the WGL market.

WGL reported that the current payment order of receivables, developed in the 1990s, has worked well, and opposed POR as costly and burdensome. Implementing POR would cost $1 million and take 12 months, WGL said, and would create $2 million annually in bad debt, the LDC estimated.

Proration is no better, due to the hours needed to prorate bills. Any billing changes would require additional burden on WGL because it would need to develop specific new Maryland systems while ensuring its D.C. and Virginia customers would be billed under its current system.

If POR is implemented, WGL argued that it should be able to apply different discount rates to different marketers, reflecting each's customer portfolio.

OPC reiterated arguments it made in RM17 when the issue of electric payments was debated. However, while OPC noted POR and other measures meant to promote competition were included in RM17, the consumer advocate argued that such measures cannot be justified for reasons of market development alone on the gas side, since there is no statutory mandate to create retail gas markets in the same way legislation specifically directs the PSC to, "create competitive retail electric supply and electric supply services markets."

OPC observed the inclusion of any expenses related to the purchase of another company's receivables in LDC residential rates may violate the "just and reasonable rates" requirement set forth in PUC Article, §4-101, since such purchases are not "necessary and proper expenses."

Under POR, "ratepayers would be in the position of providing a guaranteed revenue stream for companies whose actions may or may not be 'consumer friendly' or in compliance with Maryland law and regulations, or that can decide to shut down operations and no longer serve residential consumers at any time," OPC said.

OPC pointed to the recent exit of BGE Home Products and Commerce Energy from the Maryland gas market, noting about 17 gas suppliers stopped serving customers in all customer classes in Maryland due to bankruptcy or a decision to prematurely terminate contracts with customers when wholesale prices spiked precipitously during the 2000-2001 fall and winter. "The bottom line," OPC said, "is that competitive suppliers have no real obligation to serve residential utility customers - why do residential utility customers have an obligation to guarantee their revenues?"

OPC also objected to the proposed rule that would permit enrollment via a telephonic solicitation and verification under the limited exemptions included in the Maryland Telephone Solicitation Act, Md. Comm. Law Code Ann., § 14-2201 et seq. The law requires all telephonic agreements to be followed by a signed written contract, except in cases of a previous business relationship, or in cases where customers are responding to promotional materials or ads meeting certain conditions.

WGL sought to maintain its requirement that suppliers must submit account numbers when seeking customer information or enrolling customers. WGL credited the measure for the low incidence of slamming in its territory.

Commenting on the first-of-the-month enrollment date which has engendered attention from suppliers, Direct Energy Services suggested that enrollments be administered on an ongoing basis as they are received, so the changes take effect sooner than only once a month. "It has been our experience in other states that customers prefer switches be performed as soon as possible after an enrollment, change of suppliers, or return to the utility," Direct said. The change would address the disconnect between a supplier's requirement to begin deliveries on the first of the month, and when the supplier can start billing the customer.

But WGL noted that LDCs face the same delivery timelag when serving new customers, and argued suppliers should treat the lag as a function of doing business. While BGE offers a proration mechanism related to such timing issues due to delivery versus billing date, technology upgrades to implement such a mechanism at WGL would be costly.

Direct recommended that the proposed 45-day renewal notice be supplemented with a second notice 20 days before a contract expires, with only the latter containing the renewal rate. Shortening the time suppliers must keep a price quote open will reduce risk premiums in prices, Direct said, noting Ohio has adopted such a two-notice approach. Ohio's rule, however, is currently under review.

Direct also called for seamless transition of contracts for customers who move within the same utility service territory without the need for further action by the customer. Such contract portability within the same LDC area, "results in one less thing for a family to deal with when moving to a new location," Direct said.

LSEs Urge FERC to Withdraw RSG Exemptions in MISO

FERC "should act once and for all" to eliminate the inequity in Midwest ISO revenue sufficiency guarantee (RSG) charges, and require virtual supply offers and generators to bear their "fair share" of RSG costs, Ameren affiliates and Northern Indiana Public Service Company said in a brief (EL07-86, et. al.).

"Until this inequity is addressed, load-serving entities and their customers will be forced to foot the bill for RSG costs caused by virtual supply offers and generator deviations," Ameren and NIPSCO said.

The Commission has concluded that virtual supply offers and generator deviations contribute significantly to RSG costs regardless of any physical activity by the market participants engaging in such transactions, Ameren/NIPSCO argued.

However, the current tariff assigns RSG costs only to market participants that physically withdraw energy in the real-time market. "Therefore, while profiting from the opportunity to arbitrage differences between Day-Ahead and Real-Time prices paid by consumers in the Midwest ISO region, under the current rules market participants submitting virtual supply offers avoid all cost responsibility for the RSG costs that they help to create," Ameren/NIPSCO claimed.

The Midwest Transmission Dependent Utilities and Indianapolis Power & Light agreed, recommending elimination of the "actually withdraws Energy" requirement for the assignment of RSG costs, so that virtual suppliers and non-load serving generators are assessed such costs.

Exempting those two classes of market participants, "violates cost-causation, producing an unfair subsidization of non-LSE Market Participants by those Market Participants that do serve load," TDUs/IP&L said.

"The exemption further masks the true costs of real-time energy costs that financial traders should be using in their arbitrage decisions, and gives virtual traders and non-LSE generators incentive to cause MISO to incur costs that others will bear," TDUs/IP&L added.

More than half a billion dollars in RSG costs have been charged to load through "second-pass" uplift costs instead of being properly allocated to all who cause such costs - including the non-LSE generators and virtual traders - through the first-pass RSG charges, TDUs/IP&L calculated.

The Midwest ISO's Independent Market Monitor has concluded that virtual trading activity in the Midwest ISO markets remains robust and was not affected, in the long term, by application of RSG charges to virtual supply offers, Ameren/NIPSCO said.

Briefly:

OCC Opposes Revised FirstEnergy MBRs Over Affiliate Protections

The Ohio Consumers' Counsel protested the proposed revised market-based rate tariffs of several FirstEnergy affiliates, arguing that Ohio retail customers remain captive since no migration occurs outside of aggregation, and thus affiliate protections are needed (ER01-1403, et al.). OCC cautioned that the revised MBRs would allow FirstEnergy Solutions to contract with its affiliated distribution companies at a rate significantly higher than the current FERC-approved contract that expires Dec. 31, 2008. The new contract would be used as part of FirstEnergy's electric security plan. The FirstEnergy companies are currently subject to FERC codes requiring sellers with market-based rates serving captive customers to adhere to certain affiliate rules, including FERC approval of contracts with affiliates. FirstEnergy has applied to remove those restrictions on the basis that its customers, through retail choice, are not captive. But citing PUCO data, OCC reported no retail suppliers are enrolling new customers. Given such captivity of customers, FERC rules governing affiliate relations are needed to guard against cross subsidization and abuse, OCC said.

Eric Ryan Corp. Gets Texas License

The PUCT granted an aggregators license to The Eric Ryan Corporation for C&Is, municipal customers and political subdivisions (Matters, 9/9/08).

MXenergy Offering Energy on Ebay Again

MXenergy is giving customers the chance to set their 12-month gas commodity rate at Columbia Gas and Dominion East Ohio via online auction site ebay. The two auctions are open to residential customers only. If the final bid price exceeds MXenergy's current 12-month fixed rate, the excess will be donated to an Ohio charity. MXenergy auctioned off electricity in Connecticut last year via ebay to spark interest in growing options for Connecticut consumers.

Mirant Suspends Share Buyback to Fund New Generation

In a conservative move, Mirant suspended its share buyback program yesterday, citing current market conditions and the desire to ensure it has sufficient funds to build new generating plants, particularly as it responds to RFOs at Pacific Gas & Electric. Mirant said it has "no liquidity issues."

Pepco Utilities Oppose Severing AMI Issues

Pepco and Delmarva objected to the Maryland PSC Staff's request to sever advanced metering initiative issues from review of the IOUs' EmPower Maryland efficiency proposals (Cases 9155, 9156). Pepco and Delmarva noted studies show that achieving their EmPower Maryland targets is not possible without AMI, and urged an integrated review of smart meters along with their proposed efficiency and demand response programs. AMI-enabled dynamic pricing would cut Pepco peak demand by 244 MW by 2015, while Delmarva's peak would be cut by 57 MW. Direct load control enabled by AMI would cut Pepco peak demand by 254 MW by 2015, while Delmarva's peak would be cut by 107 MW. Under the IOUs' proposals, AMI implementation would start in 2010 and be complete by the summer of 2011.

CAISO Offering WREGIS Services

The California ISO, as a newly minted Qualified Reporting Entity (QRE) in the Western Renewable Energy Generation Information System, is offering to act as market participants' QRE at no additional charge. As a market participant's QRE, CAISO will handle various reporting duties and other services while interacting with WREGIS.

ConsumerPowerline Now Cpower

ConsumerPowerline has rebranded itself as Cpower and has expanded its partner program to grow its current channel base of over 50 business partners to additional energy services companies. Partners broaden the portfolio of products and services offered to end users in addition to CPower's energy management services.

Tesla ... from 1

truly extraordinary circumstances criterion set forth in D.07-12-052."

In particular, PG&E has, "provided no real evidence - only argument - that an RFO is infeasible," the ALJs said.

"As a consequence, proceeding with this application is inappropriate as it is an inefficient use of time and resources and could potentially undermine the procurement policies recently established by this Commission," the ALJs added.

"We reiterate here that in D.07-12-052, we set a clear preference for a markets-first approach and set an intentionally high bar for UOG in support of this preference. We do not find that PG&E's application for the Tesla Generation Station has met that high threshold," the draft states.

The proposed decision was authored by ALJs Carol Brown and Timothy Sullivan.

Gap RFPs ... from 1

to greater project and approval process complexity. A strategy intended to address a short-term need with a diverse mix of "found" existing and easily implemented new resources (such as demand response or emergency generation) avoids the error of shifting dependence on one or two time-critical transmission projects to heavy dependence on one or two time-critical generation projects, Staff concluded.

Staff shared the view of many stakeholders that reliability is a regional issue that requires regional solutions. The PSC should take whatever action is necessary to encourage, or if necessary force, PJM to develop and obtain FERC approval for a clearly defined backstop/contingency mechanism to correct reliability deficiencies in the event of delay or failure of major planned reliability assets, Staff recommended.

Staff noted that a gap based on the 2011 RPM auction may not accurately reflect the actual potential reliability gap, since the 2011 auction may not accurately reflect existing but uncommitted resources and changing load projections.

The Retail Energy Supply Association slammed generators seeking long-term PPAs to fill any short-term reliability gap, charging that, "[t]hese generators are concerned, first and foremost, about their own business models and agendas and not about the impact that a long-term contract can have on Maryland customers."

RESA noted that generator CPV Warren has asserted to the Maryland PSC that there is no guarantee that two needed transmission lines will be in service by 2011-2012, thus requiring a need for PPAs.

However, "CPV Warren has placed its own corporate interests ahead of the interests of Maryland customers," RESA charged. "CPV Warren opposed the TRAIL transmission line in West Virginia on the basis that it was not needed. In Virginia, CPV had filed testimony in opposition to the need for the line, but withdrew from the case on the eve of the evidentiary hearing after it sold its assets to Dominion Virginia Power."

"It is nonsensical, to say the least, that CPV Warren would oppose the TRAIL line in other jurisdictions by arguing that PJM has overstated the alleged reliability problem, and then file comments with this Commission alleging that the reliability problem could extend for 'many years.' CPV Warren does not appear to be participating based on the best interests of Maryland customers," RESA said.

RESA, citing the regional nature of the grid, reiterated that, "Maryland alone cannot simply build its way out of a reliability problem," since the shortfall impacts a larger reliability region.

RESA also documented that the long-term contract between Allegheny Power and the AES Warrior Run generating facility is still $39.6 million above market, despite the rising cost of power. Such costs must be collected from ratepayers despite cheaper power in the market.

The Office of People's Counsel urged the Commission to first use demand response and efficiency to meet any reliability gap. OPC noted that Baltimore Gas & Electric has identified 350 MW of new demand reduction potential while Pepco has identified 300 MW, and Delmarva has identified 80 MW. The total would meet Maryland's share of the SWMAAC deficiency, and also excludes the "speculative" load response benefits of advanced meters, OPC said.

"The Commission simply should not take steps that will impose a financial burden on Maryland customers until there is clear evidence of a need for such action," BGE agreed. Pepco and Delmarva also reiterated concerns that the Commission should avoid a long-term solution, which could be very expensive, to a short-term problem.

BGE also suggested that improving the RPM Incremental Auctions would give PJM the ability to address additional resource needs that may not have been anticipated at the time the Base Residual Auction was conducted.

CPV Maryland, however, renewed calls for long-term PPAs, cautioning that prolonging the lives of generating units due to retire, such as oil-fired plants, could be very expensive and environmentally unfriendly.