Energy Choice Matters

November 21, 2008

Texas Power to Choose Site to List Lowest-Priced Products First

The PUCT will revamp the Power to Choose electric choice website to list offers by price, with the lowest offer at the top. Customers will first be prompted whether they are interested in a variable, fixed, or green product, and then the subset of offers will be ranked by price. Commissioners decided on the change at yesterday's open meeting as Staff and the Commission's marketing vendor gave an update on the Commission's customer choice education campaign.

Power to Choose currently lists offers randomly. Commissioner Donna Nelson expressed concern that the random listing can lead to higher prices being listed at the top, where customers first look. Customers seeing those high prices first may decide to not navigate the page further, and decide against getting more information about competitive options available, Nelson cautioned.

Prices are currently listed randomly because the Commission felt price was not the only factor customers valued in choosing a plan, and that listing lower prices first could discourage customers from finding fixed-rate plans or renewable plans, both of which carry a premium. Staff also noted that retailers offering the absolute lowest prices may not necessarily be the most stable, pointing out some of the five REPs that failed this spring were among those offering extremely low rates.

Nelson said it was "dangerous" to assume that REPs offering lower prices might be more likely to go out of business. That concern will be further mitigated, she added, as the Commission acts upon proposals to strengthen the REP certification standards.

Chairman Barry Smitherman noted the site now lets customers filter the results by variable, fixed or green product, so concerns about listing products by lowest to highest price disadvantaging certain types of products has been eased, as with the filter fixed and green products will still be easy to find.

The Commission's marketing agency reported that surveys conducted during the education

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FERC to Probe ERCOT QSE Reliability Responsibility in Constellation Remand

FERC is seeking a more thorough understanding of the role of QSEs and how NERC and the Texas Regional Entity (TRE) have approached their registration on reliability compliance lists, the Commission said in remanding to NERC a dispute over Constellation Energy Commodities Group's registration as a generator operator on the NERC reliability registry due to Constellation's scheduling agreement with a power plant's owner and operator (RC08-7).

Constellation has a tolling agreement with Power Resources, which owns a 212-MW, gas-fired, combined cycle generator in Howard County, Texas. Constellation agreed to act as the plant's QSE under the tolling pact. TRE and NERC registered both Constellation and Power Resources as generator operators on the registry, which Constellation appealed since it neither owns nor operates the plant. NERC said that while Power Resources physically operates the generation facility, "it does so pursuant to directives of," its QSE Constellation, thus requiring both entities to be registered.

FERC wants to better understand the potential effect of its ultimate decision on entities that participate in the ERCOT market and on the Texas Regional Entity's registration process and determinations, saying a more complete record is needed.

The Commission noted that there appears to be 144 QSEs in the ERCOT market. TRE has registered approximately 59 entities as generator operators, 11 of which are identified by TRE as

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MXenergy More Cautious due to Economic Climate

The current economic climate has led MXenergy to take a cautious approach to growth, CEO Jeffrey Mayer said during a conference call to discuss previously released quarterly earnings (Matters, 11/20/08).

MXenergy has intensified its creditworthiness standards for customers and is imposing higher scrutiny in customer acquisitions. Even in Purchase of Receivables markets, MXenergy has to take into account the risk of customer disconnection by the utility. While MXenergy is not liable for billed receivables, disconnection leaves the marketer long on energy supply, which may need to be resold at a lower price, Mayer reported.

The marketer has also shortened the length of its long-term products, an action undertaken by several retailers in the industry. Mayer said he regretted having to throttle back marketing in the current climate, given the success in acquisitions MXenergy had been seeing (see yesterday's story).

Mayer reported MXenergy is staying focused on its own business, stating that any future acquisitions will need approval from MXenergy's lenders under amendments to its credit facility. MXenergy did not record any material financial impacts from Hurricane Ike, the marketer said.

PUCT Commissioners Don't Embrace ERCOT Interim Relief Request

PUCT Commissioners were wary of a request from ERCOT for interim relief from a Commission order in docket 31540 which requires implementation of the nodal market by January 1, 2009.

With the current indefinite delay in the nodal go-live date, ERCOT has requested relief from the order, so that it is not found in technical violation of the order (Matters, 11/4/08).

While the matter was not before the Commission yesterday for a decision, Commissioners expressed their concern with the request and nodal program in general, coming several days after lawmakers grilled ERCOT executives on the nodal program (Matters, 11/19/08).

Commissioner Donna Nelson said she was not prepared to suspend the order in docket 31540 because she did not want to give the impression that ERCOT has a blank check on meeting implementation deadlines.

Nelson further called it "disingenuous" for ERCOT to claim that the nodal program is "on budget" given the program's delay and request for increased funding (Matters, 11/20/08). While ERCOT technically may not yet have exceeded its allocated nodal funds, if ERCOT were truly on budget it would be close to completing nodal implementation, Nelson said.

Commissioner Kenneth Anderson also suggested short-term relief from the order, such as a period for 90 days with a requirement for ERCOT to re-file for additional relief if needed, may be preferable than ERCOT's proposed open-ended interim relief.

FERC Orders Major Non-Interstate Pipelines to Post Scheduled, No-Notice Flows

FERC yesterday acted to increase price transparency in the interstate natural gas markets by instituting new pipeline reporting requirements that provide information on market supply and demand fundamentals. The Commission also issued a Notice of Inquiry regarding reporting of transactions between intrastate pipelines and shippers.

Specifically, the Commission is requiring major non-interstate pipelines, defined as those natural gas pipelines that deliver more than 50 million MMBtu per year, to post on their websites scheduled flow information and to post information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day. FERC will also require interstate pipelines to post information regarding no-notice service (RM08-2).

The posting of scheduled flow information by major non-interstate pipelines will increase transparency by:

- Improving market participants' ability to assess supply and demand and to price physical natural gas transactions and transportation;
- Providing market participants a clearer view of the effects on infrastructure, the industry and the economy from disruptions to the U.S. natural gas delivery system, and

- Allowing the Commission, market participants and other market observers to identify potentially manipulative activity.

The Commission adopted three exemptions from the posting requirements -- for non-interstate pipelines upstream of a processing plant; for non-interstate pipelines that deliver almost exclusively to retail end-users; and for storage providers.

FERC will not require interstate natural gas pipelines to post information regarding all actual flows, but will require interstate natural gas pipelines to post online the volumes of no-notice service flows at each receipt and delivery point before 11:30 a.m. central time three days after the day of gas flow.

The current absence of reporting of no-notice service means that the market cannot see large and unexpected increases in gas demand and therefore cannot understand price formation during such occasions, FERC said. The posting of no-notice service will be of particular importance in the northern tier of the country during extreme weather conditions.

Separately, FERC issued a Notice of Inquiry (RM09-2) seeking comment on whether to require certain intrastate pipelines to post details of their transactions with individual shippers in a manner comparable to the reporting requirements for interstate pipelines. FERC asked if exempting intrastate pipelines from price reporting gave them a competitive advantage because they have access to publicly reported prices of interstate competitors.

The NOI stems from a request filed by SG Resources Mississippi (Matters, 9/16/08), which sought a waiver of requirements to post the rates charged in firm and interruptible transactions no later than the first nomination for service. SG Resources had said the price disclosure put it at a competitive disadvantage to intrastate pipelines which do not have to report commercially sensitive pricing information. FERC denied the waiver request.

FERC Says Investment Advisers Must Report Holdings under FPA

FERC put investment advisory firms and similar asset managers on notice that they are required to notify FERC when acquiring securities of utilities or utility holding companies in excess of $10 million.

The Commission's warning came as it determined Horizon Asset Management had violated the Federal Power Act by acquiring securities above $10 million without FERC notification, though it did not impose penalties because investment advisory firms may have been unaware of FERC's interpretation of language in the Federal Power Act which extends jurisdiction to those entities which "purchase, acquire, or take any security" in a utility. FERC found that investment advisers fall under the language.

Investment advisers have 90 days to notify FERC of their holdings in excess of $10 million (EC08-91).

FERC also clarified that if a holding company that has received an exemption or waiver from various holding company requirements subsequently becomes a holding company with respect to an additional public-utility (by obtaining the power to vote 10% or greater of the voting securities of an additional company), that holding company must notify the Commission of a material change in its status (PL09-2).

Because holding companies may have been interpreting this notification requirement differently, FERC gave companies 45 days to file such notifications for prior transactions.

FERC Orders NYISO to Reinstate 10-Year TCCs

FERC directed the New York ISO to reinstate tariff provisions establishing 10-year fixed-price Transmission Congestion Contracts (TCCs) that were approved by FERC in April but that NYISO deleted from a May compliance filing (ER07-521-003). FERC also rejected protests from munis that NYISO improperly calculated the price for TCCs (Matters, 8/20/08).

In its May compliance filing, NYISO proposed to replace the 10-year TCC with a five-year TCC that could be renewed for an additional five years. Munis objected to the change, arguing that splitting the 10-year period in half would provide NYISO with an additional opportunity to raise the price of fixed-price TCCs. FERC agreed, and ordered the 10-year TCC to be reinstated.

Munis had also protested that NYISO prices for fixed-price TCCs did not accurately reflect actual historical congestion costs because NYISO did not employ a screening mechanism to remove atypical and anomalously high congestion costs experienced in the 2007-08 winter. Munis said such costs were abnormally high due to the now-prohibited scheduling of power around circuitous paths around Lake Erie.

But FERC found such protests to be beyond the scope of the instant proceeding.

FERC accepted proposed tariff language regarding load migration which permits a load serving entity that acquires load from the holder of a fixed-price TCC to request reassignment of a proportionate quantity of fixed-price TCCs to follow the transferred load.

Under the provision, the quantity of reassigned TCCs is rounded to the nearest whole megawatt. If a fixed-price TCC is reassigned, the assignee and not the original holder is permitted to annually renew the TCC at the previously established price throughout the term of the TCC.

Briefly:

FERC Sets Conference on Credit Markets

FERC scheduled a technical conference for January 13 to discuss the impact of current turmoil in the financial markets on the electric power industry, including the impact on access to capital for normal business operations and the effect on long-term capital financing for infrastructure replacement and new project development. (docket AD09-2).

FERC Clarifies Retail Exemption Under Capacity Release

FERC clarified that retail unbundling releases and asset management arrangement (AMAs) releases are exempt from prohibitions on extensions and rollovers for short-term releases under its new capacity release rules approved in June (Matters, 6/20/08). In the June order, FERC lifted the maximum rate ceiling on secondary capacity releases of one year or less, and facilitated AMAs by exempting releases to them from a tying prohibition on bidding requirements. FERC also clarified that the delivery purchase obligation under an AMA is five months for annual periods and five to 12 months for non-annual periods.

PUCT Approves Liberty Fine

The PUCT approved a $32,000 settlement with Liberty Power subsidiary LPT LLC to resolve violations of customer disclosure rules by one of Liberty's agents, AEM Consulting. Staff had found that a fax sent out by AEM did not comply with customer disclosure requirements under Substantive Rule §25.475 (Matters, 10/17/08).

PUCT OKs Extension of Meter Read Smoothing due to Ike

The PUCT approved an extension through January 1, 2009, of current emergency rules requiring the smoothing of estimated meter reads in counties affected by Hurricane Ike. The rule requires utilities obtaining actual meter reads after a period of estimates due to the hurricane to allocate any over- or under-estimated usage in a manner that takes into account periods that the customer was not likely to have been taking service (Matters, 11/19/08).

PUCT Defers Action on Distributed Renewable Generation Rules

The PUCT deferred consideration of net metering rules for distributed renewable generation in docket 34890 until its next open meeting on December 4. Under Staff's proposal, REPs would negotiate prices for excess distributed renewable generation individually with customers, but Public Citizen has suggested designating a "buyer of last resort" in the market that would be required to offer an offsetting value of energy outflows equal to the rate charged by the electricity provider of last resort (Matters, 8/5/08, 7/22/08).

FERC Accepts Five SECA Settlements

FERC approved Seams Elimination Charge Adjustment settlements between:

• Dayton Power & Light and several Midwest ISO Transmission Owners (TOs);

• Duquesne Light Company/Duquesne Light Energy and several MISO TOs;

• FirstEnergy Solutions/American Transmission Systems and Duquesne Light;

• AEP utilities and FirstEnergy Solutions/ FirstEnergy utilities; and,

• Several MISO TOs and FirstEnergy entities.

Wal-Mart Buying Duke Wind for Texas Stores

Wal-Mart has entered into a PPA with Duke Energy to buy output from Duke's Notrees

Windpower Project in Texas. The power will provide 15% of Wal-Mart's Texas load, or roughly 226 million kWh annually.

Pepco Energy Services Awarded Prince George's Efficiency Contract

Pepco Energy Services won a 14-year, $4 million energy savings performance contract with Prince George's County, Maryland. The contract includes high-efficiency lighting and water conservation measures, the replacement of heating and cooling systems with more efficient designs, and the installation of new energy management control systems in seven buildings.

FERC OKs Suez-FirstLight Acquisition

FERC approved the acquisition of FirstLight Power Enterprises by Suez Energy North America (Matters, 9/3/08).

FERC to Revoke MBR Authority of Flat Earth Energy

FERC intends to revoke the market-based rate authority of Flat Earth Energy, LLC for failure to file Electronic Quarterly Reports (EQRs), unless such reports are filed within 15 days.

Two More Demand Response Providers Approved by DESC

Constellation Energy and NuEnergen, LLC have both been selected by the Defense Energy Support Center as demand response providers.

CME Launching New PJM Contracts

CME Group will launch 26 new PJM peak and off-peak electricity swap futures contracts on ClearPort beginning December 7 for trade date December 8. The contracts will be financially settled using PJM day-ahead and real time prices and will be listed for the current year plus the next five calendar years, beginning with the January 2009 contract. The contract size will be 80 MWh for the peak contracts and 5 MWh for the off-peak contracts. The minimum price fluctuation will be $0.05/MWh.

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campaign show that price and potential savings, by far, are the top priority of customers interested in switching.

Nelson and Commissioner Kenneth Anderson asked if it would be possible to adjust the timing of most customer education efforts, which are mostly tied to the summer since it is the time when customers are most interested in shopping. Education needs to occur just prior to the summer so customers can avoid higher summer rates, Commissioners noted.

The education campaign currently promotes choice in only certain windows during the year because of budget constraints, but the Commission has put in a request for more funding to lawmakers that would allow more education in the run-up to the summer. Funding would come from the $500 million in the system benefit fund.

Nelson expressed a desire to get to the "next level" of customer education efforts, beyond the basics of choice and switching, while Smitherman would like to see greater integration of renewable energy into the education efforts.

Staff also reported that they are working on other Power to Choose improvements, including enabling a print functionality that would allow customers to print the price listings.

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QSEs, FERC said.

From that data, "it appears that Texas Regional Entity has registered only a small portion of all Qualified Scheduling Entities as generator operators, and that most generator operators are not Qualified Scheduling Entities," FERC noted. NERC, however, did not provide any information that correlates Constellation's activities as a QSE with specific requirements of Reliability Standards.

The Commission directed NERC to make such specific identifications, indicating the correlation between Constellation's responsibilities as a Level 4 QSE and specific provisions of mandatory Reliability Standards.

Constellation argued that as a QSE it acts only an intermediary in certain communications with ERCOT, and does not have the ability to ensure that Reliability Standards applicable to generator operators are met. Power Resources retains full operational control of the facility, Constellation said.

FERC was not persuaded by Constellation's apparent position that, absent an express statement in the tolling agreement, the contract cannot be a source of conveying responsibility for compliance with mandatory Reliability Standards. If an agreement requires an entity to perform a task and makes the entity responsible for the performance of that task, the entity may be subject to mandatory Reliability Standards that pertain to the performance of such activities, FERC said. The Commission believes that Constellation, by agreeing to act as the QSE for the Power Resources facility, may be responsible as a generator operator for a discrete set of communications-related requirements set forth in the Reliability Standards applicable to generator operators.

Still, the Commission was also not persuaded that the tolling agreement elevates Constellation from a power purchaser to a generator operator that directs operations at the Power Resources facility, while Power Resources simply conducts physical operations pursuant to Constellation's direction.

Constellation will remain on the NERC compliance registry during the remand process.