Energy Choice Matters

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Bounce Energy Warns of Competitive Disadvantage from Proposed New Texas Certification Rule

New ERCOT market entrant Bounce Energy (Matters, 5/15/08) urged the PUCT yesterday to treat all existing REPs serving retail customers equally in terms of proposed new financial standards required for continued certification (docket 35767).

Under proposed new Subst. R. §25.107 f(1)(B), non-investment grade REPs would be required to maintain $3 million in liquid capital. However, the amount could be reduced to $2 million for REPs continuously serving customers without sanction for two years, and reduced to $1 million for REPs serving customers for three years (Matters, 10/2/08).

The provision for reduced capital requirements for REPs that have been in the market longer, "would provide immediate unfair competitive advantages to certain REPs based solely upon time in business, without providing benefit or protection to customers," Bounce Energy said.

Bounce Energy cited an example of two REPs serving the same amount of customers, with both REPs operating prudently and carrying $1 million in liquid capital. However, REP #1 has been in the market for 36 months, versus 23 months for REP #2. Under the current proposal, REP #1 would not be required to maintain any additional capital, but REP #2, since it has not been in business for two or three years, would be forced to obtain $2 million in additional capital, to meet the $3 million requirement. REP #2 would be forced to leave the market if it were unable to obtain the added capital, "even if it actually operated more effectively and prudently than REP #1," Bounce claimed.

Bounce suggested extending the reduced capital requirement of $1 million to any REP continuously serving customers prior to the new rule taking effect, to eliminate the competitive disadvantage. New REPs could still be subject to the initial $3 million requirement, Bounce suggested, since it would apply equally to all new REPs, and new REPs would be fully aware of the new

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Suppliers, NOPEC Fault Unavoidable Charges in FirstEnergy ESP as Unsupported

Competitive suppliers would be at a $17.50/MWh competitive disadvantage to FirstEnergy Standard Service Offer (SSO) rates due to nonbypassable charges and deferrals in FirstEnergy's proposed electric security plan (ESP), charges that NOPEC alleged were designed to destroy competition and enrich FirstEnergy (Matters, 8/1/08).

The nonbypassable Minimum Default Service (MDS) Rider, the nonbypassable Non-Distribution Uncollectibles Rider, and proposed generation rate deferrals must be amended to prevent "likely fatal" impacts on governmental aggregation, NOPEC said.

The default service rider would be an unavoidable charge of 1¢/kWh imposed on all customers, justified by FirstEnergy as needed to cover administrative and hedging costs.

However, NOPEC noted testimony from FirstEnergy during hearings confirmed that no calculation was used to develop the 1¢ rate, and that the price merely reflects management judgment. During the hearings, it was "painfully apparent" that FirstEnergy management had not even estimated the costs to be recovered, or the $1.7 billion in revenues to be generated by the charge over the three-year ESP, NOPEC said. Under cross-examination, FirstEnergy testified no estimates of the cited administrative costs or hedging costs were made.

"The naked truth ... is that the MDS charge and Rider were concocted during meetings of

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Luminant Opposes ERCOT Nodal Fee Increase, Seeks Hearing

Luminant asked for a hearing on ERCOT's proposed increase in the nodal surcharge, and the methodology used to calculate the increase, given the, "enormous additional and surprising burden that is being proposed for ERCOT market participants."

ERCOT's decision to seek recovery of 75% of nodal expenses through revenue from the fee, rather than the current 38%, has not been adequately justified, Luminant said (docket 36412). Expenses not paid from the fee revenue are financed through debt, and ERCOT said in its application that it would be prudent to decrease debt financing given current financial market conditions (Matters, 11/20/08).

However, ERCOT provided no evidence that it has actually experienced a problem receiving debt-financing for the nodal program on favorable terms, Luminant noted.

"Further, ERCOT's claims regarding its projected inability to receive debt financing would apply equally to generators upon whom ERCOT seeks to shift this new burden," Luminant noted.

ERCOT's requested relief would more than double the current nodal surcharge on very short notice. "Given the limited time frame, generators would have no opportunity to include the cost of the requested interim surcharge in their cost for future sales in the market that have already been negotiated and agreed upon, thereby forcing generators to bear the full burden of the charge," Luminant explained.

"Consequently, generators (who do not enjoy the same quasi-governmental agency status as ERCOT) could find it necessary to seek debt financing in the same uncertain financial markets facing ERCOT in order to fulfill their obligations to pay the Nodal Surcharge," Luminant said.

ABCs Say Illinois Draft Licensing Rules Too Broad

Draft rules from the Illinois Commerce Commission regarding the licensing of ABCs need to be refined to limit their application to agents engaged in the actual procurement of electricity, the Illinois Energy Professionals Association (ILEPA), Coalition of Energy Suppliers and Retail Energy Supply Association said in joint comments on the draft (Matters, 9/26/08).

Statute requires licensing of ABCs, which are defined as any person or entity that attempts to procure electricity on behalf of a retail customer. The ICC draft defines "attempts to procure" as assisting retail electric customers with the intent to procure on behalf of or sell electric service, including the evaluation of pricing and terms and conditions.

But that definition goes beyond statute, and "attempts to procure" should not include individuals merely advising customers, ILEPA argued. The draft's definition could also require attorneys, accountants, financial advisors, consulting engineers and other professionals to be licensed to conduct their normal business with their clients, ILEPA said.

ILEPA would define "attempts to procure" to mean the representation of a buyer or seller of retail electric service in a proposed transaction for the provision of retail electric service. The ILEPA definition would not include evaluation of pricing, review and advice on terms and conditions of retail electric service, or the comparison of offers extended regarding retail electric service. The ILEPA definition would also not include the rendering of legal advice, accounting, or any other professional service provided pursuant to any other law or regulation of the State of Illinois that is incidental to the procurement or sale of retail electric service.

Disclosures of remuneration for brokering services should be permitted to be made orally in the case of telephonic communications, ILEPA said. The proposed rule requires written disclosure. Competitors and other disinterested persons should be prohibited from filing complaints against ABCs, ILEPA added.

Texas Working Group Submits Recommendation on Advanced Metering Settlement

The "best solution" to support settlement of advanced meters using 15-minute interval data in ERCOT has emerged, a working group said in a report to the PUCT (project 34610), recommending a central repository that sits between the TDSPs and the ERCOT settlement system.

The total cost of the proposed solution over five years is $37.9 million, plus-or-minus 20%. The execution timeline would be 19 months.

The central repository would be hosted and managed by the TDSPs or a third party of their choosing, rather than ERCOT. The hosting by a third party is suggested because ERCOT settlements do not require a repository, and because the repository and its future uses are not part of ERCOT's core business.

For the proposed solution, the central repository would receive the usage data from the TDSPs. Usage data would then be fed to ERCOT from the repository. The data transfer methods from the repository to ERCOT would be created and maintained by a third party or ERCOT. The changes to the ERCOT settlement system would be created by ERCOT or a third party, but would be supported by ERCOT.

The Advanced Meter Implementation Team noted that its proposed solution would allow the market to configure or reconfigure the repository (in support of a forthcoming web portal, for example) without affecting Settlement or production applications, as the change would be downstream from those processes.

REPs would be able to access the data as soon as it was loaded into the repository, and data would be available 24/7.

Ontario Bill Would Tighten Marketing, Solicitation Rules

A bill in Ontario's legislative assembly would restrict the marketing and enrollment practices of electric and gas marketers in the province, while also compelling marketers to compare their rates to a customer's current rate and applicable utility rate.

Bill 131, sponsored by MPP David Ramsay, is meant to address "predatory" door-to-door retailers in the market.

Chief among its provisions is the reaffirmation of contracts by customers in writing within 60 days of the customers' receipt of their written copy contract and reaffirmation letter.

The reaffirmation letter shall list the following information:

A. The price to be paid under the new contract for the provision of energy,

B. If the consumer already purchases energy from a retailer under another contract, the penalty that would be payable by the consumer if that contract is cancelled,

C. If the consumer already purchases energy from a retailer under another contract, the price that the consumer currently pays for the provision of energy, and

D. The price that would be payable by the consumer for the provision of energy if the consumer purchases energy directly from the distribution utility.

Contracts that are not reaffirmed within 60 days would be void, as would contracts that are not followed by a written contract and reaffirmation letter.

Marketers would be prohibited from entering into a contract with a consumer by means of mail solicitation proposing the cashing of a check mailed to the consumer by the marketer. Retailers could only contract with a customer for an account when that customer's name appears on a bill issued by the distribution utility for that account.

Suppliers would be prohibited from imposing termination fees on customers who relocate.

The bill is titled the Ontario Energy Board Amendment Act, 2008.

CAISO Revises Exceptional Dispatch to Assuage FERC Concerns

The California ISO has proposed revising its Exceptional Dispatch Pricing Proposal based on an October FERC Order and technical conference, in which FERC expressed concern that non-Resource Adequacy (RA) units would not be treated comparably to RA units under the original Exceptional Dispatch proposal (Matters, 10/17/08).

Under CAISO's new proposal, eligible resources would have two options to receive compensation when they are Exceptionally Dispatched by CAISO:

(a) An Interim Capacity Procurement Mechanism (ICPM) designation for 30 days, either for a partial or full unit depending on the amount of capacity subject to Exceptional Dispatch within the 30-day period, which would obligate the resource in the same manner as a designation triggered under the tariff rules for ICPM; or

(b) A bid-based supplemental revenue payment.

To avoid adverse market incentives and minimize administrative burden, eligible resources -- non-Resource Adequacy (RA) and partial RA units -- would be required to indicate by the first day of each calendar month which method they prefer for Exceptional Dispatch compensation. If no election is made, the resource will be treated as having selected the ICPM designation option.

By giving Exceptionally Dispatched units the option to earn a monthly ICPM capacity payment, the revised proposal satisfies FERC's overarching objective that non-RA resources that provide reliability services should be paid in a similar manner - and be subject to similar obligations as resource adequacy resources, CAISO said.

The revised proposal also respects the voluntary nature of the ICPM program. Resources that are Exceptionally Dispatched can choose to earn supplemental revenues during the 30-day period following an Exceptional Dispatch, or they can opt for a 30-day ICPM designation. They are not required to accept an ICPM designation.

CAISO's revised proposal eliminates the possibility of "double payment" that existed under the CAISO's originally filed proposal. Under the new design, the CAISO would cap the amount a non-RA resource may receive in a 30-day period under ICPM and Exceptional Dispatch to the higher of $41/kW-year or a unit's (higher) cost-justified, Commission-approved ICPM capacity payment, whichever is applicable.

Briefly:

DTE Energy Trading Seeks Ohio Gas License

DTE Energy Trading applied for a competitive retail natural gas supplier license in Ohio, in anticipation of the Standard Choice Offer (SCO) in Dominion East Ohio's territory in February 2009. Under the SCO, an auction will be used to assign incumbent customers to a specific marketer, as opposed to simply obtaining wholesale supply for utility customers under the Standard Service Offer (SSO). DTE Energy Trading is serving four tranches of Dominion East Ohio's Standard Service Offer (SSO) load and two tranches of Vectren's SSO load. DTE Energy Trading sought authority to market to all customer classes at Columbia Gas, Dominion East Ohio, Duke Energy Ohio, and Vectren.

Compete Coalition Preparing Study Which Answers PPI

The Compete Coalition is set to roll-out in early December a new study on electricity competition developed by the NorthBridge Group. The study, first reported by *Matters* a week ago, was cited by the Association of Electric Companies of Texas in response to a study done by the Cities Aggregation Power Project (Matters, 11/19/08). The NorthBridge study, which has not been released yet, will compare its analysis of EIA rates to studies performed by Power in the Public Interest. According to AECT, the NorthBridge study shows that rate increases in gas-dependent restructured and regulated states from 1997-2007 have tracked each other very closely. Based on a graph in AECT's paper attributed to NorthBridge, rate increases since 1997 in gas-dependent restructured and regulated states in 2006 were virtually identical at around 145%. NorthBridge's study is titled "Embrace Electric Competition or It's Déjà Vu All Over Again."

NRG Board Rejects Exelon Offer

NRG Energy's board of directors unanimously rejected Exelon's unsolicited acquisition offer, and "strongly" urged shareholders not to tender their shares into Exelon's offer. NRG's board called Exelon's offer of 0.485 share for each NRG share inadequate and dilutive, stating it significantly undervalues NRG. NRG reiterated its prior reasons for rejecting the merger (Matters, 11/10/08), raising concerns about the lack of a credible debt financing plan, potential negative impacts on NRG's growth initiatives, and Exelon's soft earnings and regulatory risk from transitions to market pricing in Illinois and Pennsylvania.

Affordable Power Wins Customs, Border Agency Contract

Affordable Power was awarded a two-year contract by the Defense Energy Support Center to supply electricity to the Customs and Border Protection Agency in Texas. Aggregator Vickers

Power worked with Affordable Power in the bidding process and will be a prime subcontractor on the contract.

PECO Lowering Gas Supply Rate

PECO is lowering its gas cost rate to $1.01/ccf starting December 1.

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requirements prior to their market entry decision.

Bounce Energy further proposed that the six-month compliance deadline should be extended to 18 months, in order to protect existing REPs from adverse consequences of the proposed rule, "including a death penalty."

"This additional time will likely be necessary for impacted REPs to prudently obtain additional capital required by the proposed rule, without suffering harsh or unfavorable terms," Bounce said, noting prevailing and projected economic market conditions for obtaining equity and/or debt financings are "extremely unfavorable."

"It must also be noted that, for any company seeking capital financing, an impending deadline for obtaining such capital will significantly weaken the negotiating leverage of that company and will likely result in the undervaluation of its business relative to the terms of such financing transaction," Bounce added.

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FirstEnergy management and simply set at the rate of 1 cent/kWh," NOPEC charged.

The lack of quantitative analysis or substantive justification for the rider means FirstEnergy has failed to carry its burden of proof in supporting the rider, which is, "nothing more than a $1.731 Billion exit fee proposed to eliminate competition," NOPEC alleged.

FirstEnergy replied that the ESP is not a cost-based vehicle and, therefore, precise calculations are not a prerequisite to justify the minimum default service rider.

Suppliers and NOPEC also objected to the Non-Distribution Uncollectibles Rider, which would collect generation-related uncollectible expenses from shopping customers. If PUCO approves the rider, it should only do so by compelling FirstEnergy to purchase the receivables of competitive suppliers, to eliminate the disparate treatment and subsidization that would occur under the rider as currently proposed, NOPEC said.

FirstEnergy countered that uncollectibles recovered via the Non-Distribution Uncollectibles Rider result from, "the societal and state policy benefits associated with the Companies' role as default service providers - benefits which are enjoyed, and should be borne, by all."

Generation rate deferrals, which have been opposed by Staff, also drew criticism from NOPEC in its post-hearing brief. "Not a single intervening party has advocated retaining the deferrals," NOPEC said. In the first year of the ESP, the deferral would give FirstEnergy a $7.50/MWh pricing advantage compared with competitive supply, when, coupled with the $10/MWh default service rider, would lower the FirstEnergy SSO rate 25%, or put competitors at a $17.50/MWh disadvantage. If deferrals are maintained, a shopping credit equal to the deferred costs should be created, to maintain an apples-to-apples comparison of competitive and utility rates, NOPEC said. Deferrals costs would then be collected from all customers in the future.

NOPEC asserted that the ESP application amounts to a nearly $14 billion transaction between the FirstEnergy utilities and their affiliate FirstEnergy Solutions without a contract in place between the two separate corporate entities, and without any justification for the proposed generation rate. Indeed, several stakeholders, including industrials in the Ohio Energy Group, noted that with a significant decline in forward energy prices, the market rates used as a benchmark by FirstEnergy needs to be re-evaluated.